

# SHOULD I **STAY** OR SHOULD I **GO**?

Considerations  
for a marital  
home during  
a divorce or  
separation

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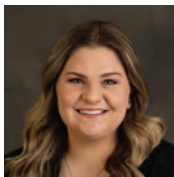
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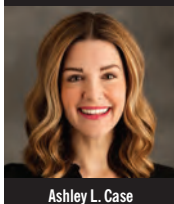
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# ANNOUNCEMENTS

## PROFESSIONAL & PERSONAL ACHIEVEMENT



Riley L. Arter

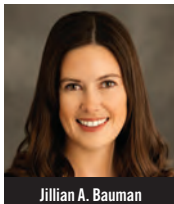


Ashley L. Case

**RILEY L. ARTER** and **ASHLEY L. CASE** recently published an article with the *National Association of Estate Planners & Councils Journal of Estate & Tax Planning*, “Anatomy of an Informed Decision: Dissecting Client Organ Donation

under the Uniform Anatomical Gift Act.” The article focuses on the myths and misconceptions surrounding organ donation and includes practical advice to estate planners on counseling clients to either choose or not choose organ donation.

**JILLIAN A. BAUMAN** was admitted to the 2024-2025 class of the State Bar



Jillian A. Bauman

of Arizona’s Bar Leadership Institute. The Bar Leadership Institute is a selective program designed to train the next generation of Bar members

and community leaders. Jillian also co-moderated a panel for an American Bar Association webinar hosted by the Middle Market and Small Business Committee’s Young Lawyer Subcommittee that focused on client management in the context of a business transaction.

**JODI R. BOHR** participated as a panelist with other employment lawyers at an employment law conference in New Orleans. The panel discussed the FTC’s final rule banning non-competes,

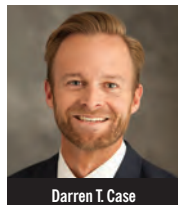


Jodi R. Bohr

what the future may hold, and what recourse businesses have for protecting themselves in a landscape where non-compete, non-solicitation, and non-disclosure/confidentiality agreements are being assailed on several fronts.

**ASHLEY L. CASE** released *Arizona Estate Planning and Will Drafting with Forms*, a comprehensive estate planning guide tailored for professionals in Arizona. This essential resource, published by Matthew Bender (LexisNexis), covers the attorney’s role, ethical obligations, legal document drafting, tax implications, and best practices for client interactions. With practical insights and real-world examples, the book serves as an indispensable tool for navigating the complexities of estate planning in Arizona.

**DARREN T. CASE** and **ASHLEY L. CASE** joined Forbes as contributing

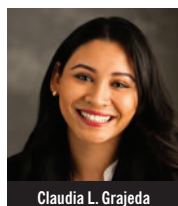


Darren T. Case

authors to the money section of Forbes.com, focusing on tax and estate planning. Forbes.com is part of Forbes Digital, a division of Forbes

Media, whose websites reach more than 27 million visitors each month.

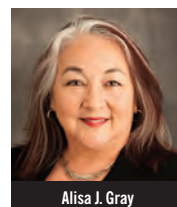
**CLAUDIA L. GRAJEDA** was accepted into the University of Florida Tax LL.M. studies program and began courses this fall. The program is recognized as a leader in the field, ranked among the very best annually in *U.S. News and World Report*.



Claudia L. Grajeda

**CLAUDIA L. GRAJEDA** and **VANESSA R. HEIM** participated in the Let ABC15 Know phone bank. The volunteer attorneys collectively answered 153 estate-planning calls over the span of 2 hours.

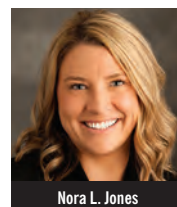
**ALISA J. GRAY** moderated a panel discussion at the State Bar of Arizona’s Advanced Probate Seminar entitled “Tribal Probate Law in Arizona.” The panel included two tribal judges and two attorneys who practice in tribal



Alisa J. Gray

court. Alisa was also a faculty member at the Bar’s Annual Convention for a program called “The Compassionate Attorney – Bringing Mindfulness into the Courtroom and the Conference Room.” This program received the President’s Award due to its appeal to Bar members, diverse panel of speakers, and co-sponsorship among Bar entities.

**VANESSA R. HEIM** and **NORA L. JONES** hosted a presentation for Charles Schwab’s national Trust and Estate team regarding how to identify red flags of potential financial abuse or



Nora L. Jones

incapacity to consider when talking with clients and their families. The presentation highlighted key issues in the Elder Law arena, and potential

pitfalls when selecting an individual to represent your interests in a fiduciary capacity. The discussion offered practical points, which will further conversations and help identify and avoid potential controversies going forward.

**NORA L. JONES** co-authored *Arizona Probate and Trust Litigation and Administration with Forms* published by LexisNexis. The book, authored by four experienced Arizona probate attorneys, explains the current state of the law in Arizona regarding trusts and estates. Many of the chapters are written as “how-to” guides for practitioners to apply the law, including all of the necessary forms. Nora also presented at the Trust and Estate Track of the CLE by the Sea program, which provided a comprehensive exploration of ethics, case updates, and practice pointers tailored for trust & estate practitioners.

**CHRISTOPHER R. KAUP** was a panelist for the Arizona Black Bar Association program entitled “Financial Inequity in the Legal Profession.” The



# ANNOUNCEMENTS

## GOOD WORKS

## Continued Tradition of Giving

Tiffany & Bosco has continued its tradition of supporting charitable causes throughout the Valley. In recent months, the firm's attorneys and staff have joined together to give back to the community.



### BILTMORE ASSISTED LIVING

This Easter, the firm held a fundraising drive for its neighbors at Biltmore Assisted Living. The attorneys and staff spread cheer by donating 10 Easter Baskets full of candy, word puzzles, and other fun surprises.

### WOUNDED WARRIOR PROJECT

To show appreciation for veterans over the Memorial Day Holiday, the firm's attorneys and staff made donations to the Wounded Warrior Project ("WWP"). This incredible organization provides resources to service members who served and incurred a physical and/or mental injury, illness, or wound during or after service. WWP offers long-term rehabilitative care, mental health programs, career and VA benefits counseling, and more. It was an honor to raise money for those

who have made sacrifices for our freedom and safety.

### BOYS AND GIRLS CLUBS

Tiffany & Bosco is a Diamond Partner of the Boys & Girls Clubs of Greater Scottsdale ("BGCS"), and its attorneys and staff share a long history of working with this life-changing organization. The BGCS serves thousands of youth at nine locations in the area, providing guidance, support, and encouragement to children and teens in a safe environment. This August, the firm hosted a Back to School drive and raised money to help send children back to school with the supplies and clothes needed for a successful school year.

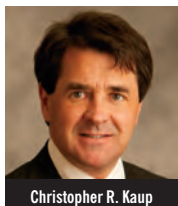
## RECOGNITION

## Simply 'The Best'

*The Best Lawyers in America* is a listing of outstanding attorneys who have attained a high degree of peer recognition and professional achievement.

**The 2025 listing recognized:** Shaine T. Alleman (Real Estate Law), Jodi R. Bohr (Commercial Litigation; Litigation-Labor and Employment), Mark S. Bosco (Litigation-Banking and Finance; Mortgage Banking Foreclosure Law), Darren T. Case (Trusts and Estates), David L. Case (Litigation-Trusts and Estates; Tax Law; Trusts and Estates), Sarah K. Deutsch (Commercial Litigation), James A. Fassold (Litigation-Trusts and Estates), Alisa J. Gray (Litigation-Trusts and Estates), John A. Hink (Real Estate Law), Nora L. Jones (Litigation-Trusts and Estates; Trusts and Estates), Christopher R. Kaup (Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law; Litigation-Bankruptcy), Jacob Kiser (Litigation – Real Estate), May Lu (Business Organizations (including LLCs and Partnerships); Closely Held Companies and Family Businesses Law; Corporate Governance; Corporate Law; Mergers and Acquisitions Law), Robert D. Mitchell (Commercial Litigation; Litigation-Securities), Diane Murray (Litigation-Bankruptcy), Kevin P. Nelson (Litigation-Construction), James P. O'Sullivan (Business Organizations (including LLCs and Partnerships); Closely Held Companies and Family Businesses Law; Mergers and Acquisitions Law), Robert A. Royal (Business Organizations (including LLCs and Partnerships)), Anthony R. Smith (Mortgage Banking Foreclosure Law), Michael E. Tiffany (Real Estate Law), and Donald M. Wright (Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law; Litigation-Bankruptcy).

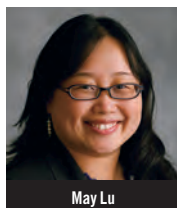
The Best Lawyers in America listed the following attorney as Ones to Watch in 2025: Elizabeth Loeffgren (Real Estate Law) and Mina C. O'Boyle (Real Estate Law).



Christopher R. Kaup

program focused on expanding financial literacy for lawyers with the aim to bridge the financial gap. In addition, Chris moderated a program hosted

by the State Bar of Arizona's Council on Minorities and Women in the Law that focused on the Supreme Court's landmark decision overturning its prior decision on affirmative action. The program was awarded the President's Award, an award that gives special recognition to superior seminars.



May Lu

**MAY LU** co-sponsored and co-presented a lunch & learn discussion entitled "Create a Dynasty Family: Continuation of Family & Business."

**J. LAWRENCE MCCORMLEY, EMILY S. FANN, and MINA C. O'BOYLE** attended the grand opening for one of their client's new Low Income Housing Tax Credit (LIHTC) affordable housing developments, The Reserve at Thunderbird. This 242-unit apartment complex provides a

mix of market and income-dependent 2, 3, and 4-bedroom units to accommodate families of all sizes. Our Tiffany & Bosco real estate team handled all of the legal aspects of the project from acquisition and financing to development issues.

**JAMES P. O'SULLIVAN** presented "Done



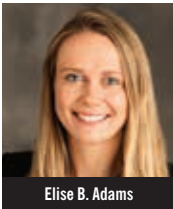
James P. O'Sullivan

& Done-er: Managing Legal Issues for a Successful Closing (and a Happy Ever After!)" at the Spring 2024 M&A Source Conference in May 2024.

# ANNOUNCEMENTS

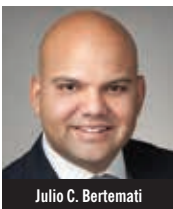
## PROMOTIONS

**ELISE B. ADAMS** was promoted to Shareholder in July 2024. Elise focuses her practice on probate and trust litigation, estate administration, elder law, and appeals. Elise represents clients in matters such as will and trust contests; matters involving allegations of breach of fiduciary duty, surcharge, or financial exploitation; simple and complicated guardianship and conservatorship proceedings; and providing general guidance to trustees, personal representatives, creditors, and beneficiaries. She received her Juris Doctor from the Sandra Day O'Connor College of Law at Arizona State University.



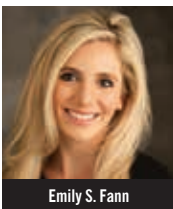
Elise B. Adams

**JULIO C. BERTEMATI** was promoted to Shareholder in July 2024. Julio works with the firm's Florida Financial Services Group and leads Florida's contested litigation team. His litigation practice focuses on commercial litigation and default servicing, including banking, consumer finance, evictions, bankruptcy, and real estate foreclosures. Julio focuses on achieving his clients' goals in an efficient and effective manner. Julio earned his Juris Doctor from the Shepard Broad Law Center at Nova Southeastern University.



Julio C. Bertemati

**EMILY S. FANN** was promoted to Shareholder in July 2024. Emily is licensed to practice in Arizona and Texas. Her practice focuses on commercial real estate transactions, including acquisitions, dispositions, debt and equity financing, joint venture formation, and commercial leasing. Emily also assists both borrowers and lenders in structuring, negotiating, and documenting loans, restructurings, and other financial arrangements. Additionally, she provides counsel to her clients on related corporate and business issues. Whatever the transaction is, Emily's objectives revolve around dealmaking and client relations.

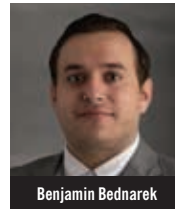


Emily S. Fann

## NEW FACES

## Tiffany & Bosco Welcomes 4 Attorneys

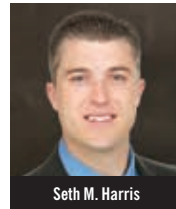
**BENJAMIN BEDNAREK** joined the firm in March 2024 as an Associate. He practices focuses primarily on intra-business disputes and officer/director liability litigation. He received his Juris Doctor from the James E. Rogers College of Law at the University of Arizona. While in law school, Ben served as an Articles Editor for the *Arizona Journal of International and Comparative Law* and clerked for a full-service law firm. Before joining Tiffany & Bosco, Ben was an associate at a national law firm where he focused on employment and commercial litigation matters. Ben played football at his undergraduate alma mater, starting three years at center. In his free time, Ben enjoys spending time with his dachshund, Frank, and anything related to the NFL and his beloved Chicago Bears.



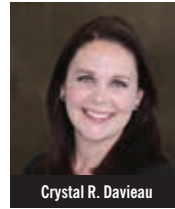
Benjamin Bednarek

Crystal earned her Master of Laws in Business Law from the Chapman University, Dale E. Fowler School of Law.

**SETH M. HARRIS** was hired as a Shareholder at Tiffany & Bosco in March 2024. Seth has practiced for over 16 years in the financial services litigation field. He has handled all manner of litigation and appeals, including title issues, real estate disputes, receivership actions, government code violations, wrongful foreclosures, and eminent domain. Seth enjoys the courtroom and has had the pleasure of handling numerous trials as lead counsel. He has developed multiple teams over the years and takes pride in mentoring the younger generation. Seth earned his Juris Doctor from Whittier Law School where he participated in moot court competitions and served as an editor for the Law Review.



Seth M. Harris



Crystal R. Davieau



Richard L. Stevenson

**CRYSTAL R. DAVIEAU** joined the firm in May 2024 as an Associate. She is based in the California office and her practice includes a wide range of civil litigation with a focus on real estate, mortgage, and title matters. She enjoys keeping up with industry developments and recently published a short article in the United Trustee's Association's UTA Quarterly. Prior to transitioning to civil litigation, Crystal practiced criminal law in California and Washington State. Crystal earned her Bachelor of Arts from Arizona State University and later earned her Juris Doctor from Phoenix School of Law, where she served on the *Phoenix Law Review*. Thereafter,

**RICHARD L. STEVENSON** joined the firm as an Associate in August 2024. Prior to joining Tiffany & Bosco, Richard practiced for over 19 years in the areas of bankruptcy, foreclosure, real estate, estate planning, and litigation. Richard received his B.A. Degree from Santa Clara University, where he graduated *cum laude*, and received his Juris Doctor degree from Thomas Jefferson School of Law, where he graduated *magna cum laude* in May 2005. He was the recipient of the Witkin, CALI, and Jefferson Medal awards for academic excellence in Bankruptcy, Advanced Property, and Trusts, as well as the American Bankruptcy Institute's Medal of Excellence in Bankruptcy. In his spare time, Richard enjoys traveling, reading, hiking, and spending time with friends and family.

### { NEED AN ATTORNEY? }

See the directory on the back page of this newsletter or visit us online at [tblaw.com](http://tblaw.com).

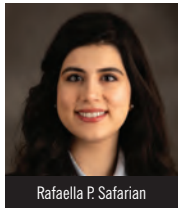
## GET TO KNOW US

# Behind the Scenes

*The Court of Appeals through the eyes of a former judicial law clerk*

BY RAFAELLA P. SAFARIAN

The Arizona Court of Appeals (“COA”) is a well-oiled machine. While the judges are the face of the COA, their appellate decisions are a collective effort of judges, judicial assistants, staff attorneys, staff in the Clerk’s Office, and judicial law clerks.



Rafaella P. Safarian

The COA has two divisions. Division One, based in Phoenix, decides appeals from Apache, Coconino, La Paz, Navajo, Maricopa, Mohave, Yavapai, and Yuma counties. Division Two, based in Tucson, decides appeals from Pima, Pinal, Cochise, Santa Cruz, Greenlee, Graham, and Gila counties. Each division has a chief and vice chief judge. I had the privilege of clerking for Vice Chief Judge Randall M. Howe in Phoenix for two years after graduating from law school.

Appeals begin at the Clerk’s Office, which handles case management, including receiving the appellate briefs and the record on appeal (the superior court filings). The Clerk of Court then assigns each case to a panel of three judges, as well as schedules the conference date (i.e., the day when the judges will discuss the case) and oral arguments, which, when scheduled, provide parties with the opportunity to present their arguments before the judges.

Each panel has a presiding judge, who sits in the middle of the bench during oral argument. As presiding judge, Judge Howe allocated authorship of the decisions among the panel. Then, he assigned his cases to my co-clerk and me.

Upon receiving my assignment, I reviewed the record on appeal, briefs, and law. I discussed the case with Judge Howe either one-on-one or during weekly chambers meetings. Based on our discussions, I drafted a memorandum decision two weeks before the conference date, doing my best to conform to his writing style. After his review and after I completed any revisions, I submitted the draft to the panel one week before the conference. By the day of the conference, the judges had made suggested redlined edits and comments on the draft for discussion.

During conference, I presented Judge Howe’s decision to the panel, and the judges discussed whether they agreed or disagreed based on the law and the record. Some decisions were not rendered on conference day. Sometimes, the panel reconvened

after further analysis or supplemental briefing.

If oral argument was scheduled, I attended to take notes (or to serve as bailiff if it was our chambers’ turn). Sometimes, oral argument clarified the judges’ questions or even changed the panel’s decision. I learned that the parties should shift the argument’s focus or length according to the panel’s line of questioning, especially if the panel continues questioning about a particular portion of the briefing, or if the panel is largely quiet on the bench. I also attended any post-argument conferences. After making any necessary revisions to the draft decision, Judge Howe’s judicial assistant and I would cite check and record check the draft. The judicial assistant then sent the draft to the panel for final approval. If the panel determined that the decision should be an opinion, all judges from both COA divisions had the chance to approve of and comment on the opinion itself before publication. Subsequently, the Clerk’s Office published the draft.

My experience at the COA was invaluable. Not only did I develop research and writing skills, but I also developed relationships with the judges, fellow law clerks, and staff. Now that I have entered private practice, Judge Howe remains a mentor and inspiration to me. As I proceed further along in my legal career, I aspire to become a mentor like him someday.





## FAMILY LAW

# Should I Stay or Should I Go?

## Considerations for a marital home during a divorce or separation

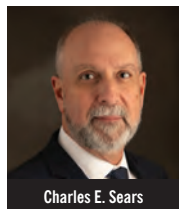
BY CHARLES E. SEARS

“Will it make a difference whether I move out of the house I share with my spouse before I file for divorce?”

This is a common question asked of

divorce attorneys. Another frequently asked question is whether it makes a difference if the client or their spouse moves out of the marital residence before either files for divorce or before their divorce is final.

In 2022, the Arizona Court of Appeals (“COA”) provided guidance concerning those questions in *Ferrill v. Ferrill*. However, as with most questions posed



Charles E. Sears

to attorneys, the answer to those questions remains, “It depends.” Specifically, it depends on whether:

- > The house, often referred to as the “marital residence,” is community property or is the separate property of one spouse (i.e., it was purchased by one spouse before marriage or it was purchased during the marriage but one spouse quit-claimed it to the other);
- > The spouse who remains in the marital residence will seek reimbursement from the spouse who moved out for one-half of the payments made by the occupying spouse toward the mortgage after the date

of service of the divorce petition (the “Service Date”);

- > The spouse who leaves the house wants to be reimbursed by the other spouse for half of the fair market rental value of the house after the Service Date; and
- > The spouse who moves out was ousted from the marital residence instead of moving out voluntarily.

There are other factors to consider as well, but the list above makes for a good start to the discussion on whether to stay or to go.

### DETERMINING WHAT PROPERTY BELONGS TO THE COMMUNITY

When a couple marries, they are referred to as the “community.” Arizona is what is known as a “community property” state. This means that anything acquired by either spouse during

the marriage is community property and each spouse has an equal interest in that property. There are several exceptions, such as gifts or inheritance (if it is not later commingled with community monies) and any items carved out in a pre- or post-marital agreement. Community property also applies to debts. Real estate purchased during the marriage that results in a mortgage and a deed in both spouses' names creates a community mortgage. In other words, both spouses have an obligation for the debt.

When a divorce decree is entered, termination of the marital community occurs on the date that the divorce petition is served on the respondent spouse. This means that, after service of the divorce petition and with certain exceptions, any debt incurred by a spouse is that spouse's sole obligation and does not obligate the other spouse or the marital community. The same applies to anything acquired after the Service Date.

### EFFECTS OF OUSTER

To be ousted means that a person (typically a co-tenant) is excluded or dispossessed from the residence. In the *Ferrill* case, Husband and Wife married in 1990. The parties had a marital residence encumbered by a community mortgage. Husband moved out of the marital residence in July 2019, and in October 2019, Wife filed a petition for divorce. Husband was served with the divorce petition that same month and, thereafter, Wife paid the monthly mortgage payments with her separate—not community—funds. At the trial on Wife's divorce petition, Wife's position was that Husband should have to reimburse Wife for payments she made on the community mortgage with her separate funds. Husband argued that any such reimbursement should be offset by the fair market rental value of the marital residence because Wife maintained exclusive use of it during the divorce proceedings. The trial court agreed that Wife had exclusive use of the marital residence and, for that reason, it denied Wife's request for reimbursement. Wife appealed the

trial court's ruling, and Husband cross-appealed for other reasons.

The general rule in Arizona has been that during a divorce, a spouse who remains in the marital residence and makes payments on a community mortgage with separate funds is entitled to reimbursement from the other spouse for one-half of those payments, even if the other spouse left the marital residence. However, in *Ferrill*, the COA held that if the spouse who left the home was "ousted" from it—and only if there was an ouster—that spouse "is entitled to an offset toward the reimbursement claim up to one-half of the fair market rental value of the house." Whether a spouse has been ousted is determined by a family court judge and depends upon the facts presented. In *Ferrill*, the COA remanded the issue of whether Husband was ousted to the trial court because although Wife allowed him access at one point to retrieve property, she later denied him access when he requested an inventory of community property within the home.

### SHOULD I GO?

Although it is not necessary for the family court judge to find that the spouse who left tried to continue occupying the home before being ousted, you still may want to stay in the house if you ever find yourself in this situation. If you are the spouse who wants to leave the marital residence and your spouse is going to remain in the home and make payments toward the community mortgage, and if you want to seek an offset against those payments without having been ousted from the residence, remaining may be the better option. But as recognized by appellate courts other than Arizona's, this is not ideal. The emotional and psychological strain of a divorce often make it extremely difficult for a couple to continue living under the same roof. During a divorce, it may be prudent to move out of the marital residence and waive a reimbursement claim rather than risk domestic violence occurring or being alleged. This may result in an Order of Protection against you, or worse, potential arrest and conviction

for domestic violence—even if you are actually innocent or were the victim of domestic violence. However, an Order of Protection prohibiting one spouse from being at the marital residence and granting exclusive use to the victim/petitioner spouse would—or should—constitute an ouster from the marital residence.

Another way to achieve an ouster is for the spouse who wants to remain at the marital residence to file a motion with the court requesting exclusive possession and control of the marital residence during the divorce proceedings, i.e., to exclude the other spouse from the marital residence until a divorce decree is entered. The respondent spouse can object to the request and, if the motion is granted, this would result in an ouster of the respondent spouse. If the respondent spouse agrees to the motion, the parties should memorialize the agreement in writing or in a court order, which should state that the parties agree that the excluded spouse has been ousted from the marital residence.

To summarize, in a contested divorce where one spouse stays in the marital residence and the other goes:

- > If the occupying spouse makes a claim for reimbursement of payments made toward the community mortgage after the Service Date, that spouse needs to present evidence to the trial court showing that all of the payments, including the total amount, were made with separate funds toward the community mortgage;
- > The trial court judge must determine as a matter of fact whether an ouster occurred; and
- > If an ouster occurred, evidence of the marital residence's fair market rental value and when the ouster occurred must be presented at trial by the ousted spouse.

If you are contemplating divorce or are currently involved in divorce litigation and need to decide whether you should stay in the marital residence or go, you should consult with an experienced family law attorney. As the song goes, "If you go, there could be trouble, but if you stay, it could be double."

## BUSINESS LAW

# ESSENTIAL LESSONS

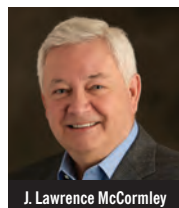
## Arizona dealership settles enforcement action for \$2.6 million over deceptive advertising and hidden add-ons

BY J. LAWRENCE MCCORMLEY, TARA M. YOUNG, MINA C. O'BOYLE, MICHAEL A. WRAPP, AND MALCOLM A. GILES

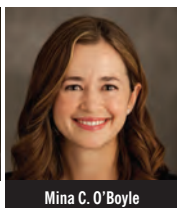
A recent joint action by the Federal Trade Commission (“FTC”) and the Arizona Attorney General (“Arizona AG”) against a Tempe-based automotive dealership, resulting in a \$2.6 million settlement, underscores the need for automotive dealerships to periodically reassess their advertising practices and the sale of add-on products and services to ensure continued alignment with federal and state regulations.

### UNDERSTANDING THE ALLEGATIONS: Key Issues in the FTC and Arizona AG Complaint

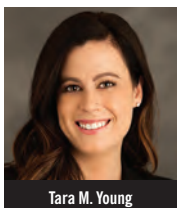
The FTC and Arizona AG’s complaint identified, among other issues, alleged deceptive advertising practices and the



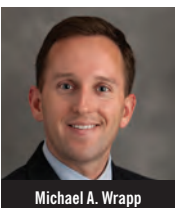
J. Lawrence McCormley



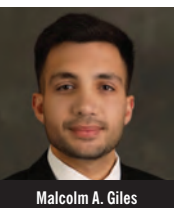
Mina C. O'Boyle



Tara M. Young



Michael A. Wrapp



Malcolm A. Giles

improper handling of add-on sales. The complaint asserted that the dealership engaged in misleading advertising by promoting vehicles at prices that were not actually available to consumers due to undisclosed fees and markups. Specifically, the FTC and Arizona AG alleged that the dealership “lure[d] consumers into their automobile dealerships with low advertised prices for new and used vehicles” only to impose additional charges through a “surprise ‘market

adjustment’ on the vehicle and other bogus fees and charges.” Such conduct was cited as a violation of Section 5(a) of the FTC Act (15 U.S.C. § 45(a)), which prohibits unfair or deceptive acts or practices in commerce, and the Arizona Consumer Fraud Act (A.R.S. §§ 44-1521 to 44-1534), which mandates truthfulness in advertising and sales practices.

The complaint also alleged that the dealership’s approach to selling add-on products such as theft protection, paint





coatings, and window tinting violated Section 5(a) of the FTC Act and the Arizona Consumer Fraud Act. The FTC and Arizona AG alleged that these add-ons were frequently included without the customer's explicit consent or were falsely presented as mandatory as part of the vehicle purchase. As noted in the complaint, "[i]n many instances, Defendants charge consumers for add-on items the consumers have not authorized, Defendants tell consumers that such add-ons are required, or charge consumers twice for the same add-ons." The FTC and Arizona AG maintain that these practices violate both federal and state consumer protection laws, which require clear and conspicuous disclosure and an informed customer agreement for any charges that exceed the advertised price.

#### COMPLIANCE CONSIDERATIONS FOR ARIZONA DEALERSHIPS

Beyond general prohibitions against

consumer fraud, Arizona law provides limited statutory guidance on dealership advertising or the sale of add-on products and services. However, the complaint and broader industry standards offer practical guidance for dealerships aiming to align their practices with regulatory expectations.

**Advertising Practices:** The National Automobile Dealers Association recommends that advertisements, regardless of the medium, should not "misrepresent the total price consumers are to pay" for vehicles, products, or services. Best practices dictate that advertisements should clearly "advertise the amount a consumer would need to pay to purchase the identified vehicle, as equipped." Although certain government-imposed fees (e.g., taxes and licensing fees) may be excluded from the advertised price, the advertisement should clearly state that such fees will be required in addition to

the advertised price. Similarly, Arizona law requires that advertisements clearly and conspicuously disclose whether a document fee will be charged as part of the transaction. Moreover, any material restrictions or conditions associated with the advertised price—such as the expiration date of an offer—should be conspicuously disclosed.

#### Add-On Products and Services:

When offering optional products and services, dealerships should conduct a review of such products and services with customers at the point of sale and incorporate an optional add-on products and services disclosure form into the deal jacket. This form should comprehensively list all optional products and services, along with their respective prices, and clearly state that these items are not required for the purchase, financing, or leasing of a vehicle. Additionally, the form should require customers to acknowledge that the products are optional and that the benefits, terms, and conditions of each add-on have been fully explained, thereby ensuring an informed purchasing decision. Proper documentation of these disclosures can serve as a defense against claims of unauthorized charges.

Given the limited statutory guidance under Arizona law, staying abreast of FTC and Arizona AG enforcement actions is critical for ensuring compliance with federal and state laws that govern dealership practices. The recent FTC and Arizona AG complaint discussed above underscores key compliance measures, such as transparent advertising, clear and conspicuous disclosures of optional products and services, and obtaining explicit customer consent for add-ons.

#### HELP WITH STAYING COMPLIANT

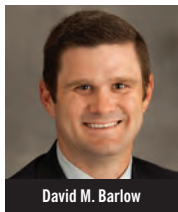
If your dealership requires representation in matters involving advertising or add-on product claims, or assistance in assessing its regulatory compliance, Tiffany & Bosco's automotive law team is available to provide experienced counsel and support.

## FINANCIAL

# Arizona Court of Appeals Affirms Voter-Approved Increases to Exemptions

BY DAVID M. BARLOW

Last spring, we wrote about Proposition 209 and the significantly increased protections afforded to debtors through a voter-approved amendment to Arizona's exemption statutes, which place specific assets outside of the reach of judgment creditors. In November 2022, Arizona voters



David M. Barlow

overwhelmingly approved Proposition 209, also known as the "Predatory Debt Collection Act" (the "Act"). In addition to lowering the maximum interest rate on medical debt, Proposition 209 significantly increased protections afforded to debtors and altered the rights of creditors by increasing exemption amounts related to: homesteads; household goods, furnishings, and electronic devices; equity in a motor vehicle; equity in a motor vehicle if the debtor or the debtor's dependent is physically disabled; and money held in a personal bank account. There are particularly significant changes for the most commonly asserted exemptions—homestead and wages. The homestead exemption for equity in a personal residence increased from \$250,000 to \$400,000 and the amount of wages ("disposable earnings," as defined in the statute) that a creditor now may reach has decreased from 25% to 10%. The Act provides that it applies "prospectively only," meaning that these changes will only apply after the Act's effective date of December 5, 2022, and will not apply retroactively.

Upon the passage of Proposition 209, the Arizona Creditors Bar Association and several other pro-creditor organizations immediately challenged

the constitutionality of Proposition 209. A Maricopa County Superior Court judge denied their challenges, and they appealed the decision to Division One of the Arizona Court of Appeals. On April 30, 2024, the Court of Appeals unanimously affirmed the lower court's ruling.<sup>1</sup>

Although both the challengers and the State presented arguments based on standing—a party's right to bring a lawsuit and have the court rule on the merits of its claims—the crux of the challengers' argument was regarding the constitutionality of Proposition 209.

They argued that Proposition 209 is unconstitutional because it is vague and unintelligible. The challengers sought to prevent the Act from taking effect, or, alternatively, to have a declaratory judgment issued specifically delineating the scope of the Act's application.

Along those lines, the challengers focused on the issue of whether the new law applies where a judgment being enforced was obtained prior to the Act becoming effective, but the garnishment proceedings were initiated after the Act went into effect. The essence of their argument was that the Act is unconstitutionally vague because it fails to cover whether it applies when a judgment pre-dates the Act but the garnishment proceedings occurred or continued after the December 5, 2022 effective date of the Act. The Court of Appeals ruled that the challengers' arguments could not prevail and held that the Act was valid.

In issuing its opinion, the Court of Appeals acknowledged that "[t]here will undoubtedly be difficult questions about the prospective application of the Act, including those

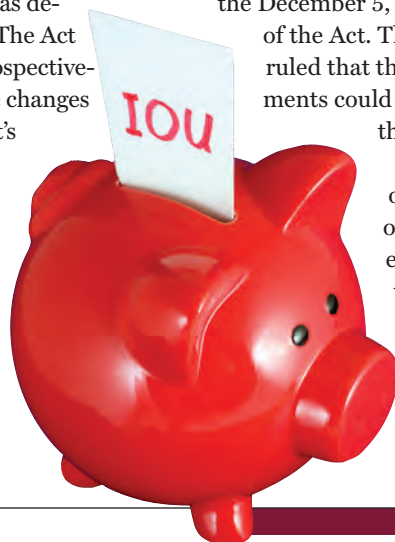
involving wage garnishment proceedings." In doing so, the Court of Appeals acknowledged that judgment creditors may face issues caused by the uncertainty surrounding the Act's application, such as where a court may be asked to decide when a particular right or duty matured under the new law.

Despite these "difficult questions," the Court of Appeals stated that trial courts should be tasked with working through these types of issues. True to that prediction, the Court of Appeals has already considered two recent appeals relating to the interpretation of the Act in the context of garnishment proceedings.

In February 2024, the Court of Appeals issued a ruling on the issue of whether a judgment obtained before the Act's effective date<sup>2</sup> was subject to the increased exemption amounts where the garnishment proceeding began after the Act's effective date. The Court of Appeals held that the garnishment proceeding was a separate action, and even though it was based on a judgment entered before the Act's effective date, the judgment debtor was nonetheless protected by the increased exemptions.

Even more recently, the Court of Appeals considered whether a judgment creditor's writ of garnishment and continuing lien on a judgment debtor's non-exempt earnings could be quashed based on the passage of Proposition 209.<sup>3</sup> Specifically, the judgment debtor moved to quash or amend the continuing lien and garnishment because of the changes Proposition 209 made to the law.

On June 27, 2024, the Court of Appeals held that the language in the garnishment order and continuing lien did not violate the Act, and that although the percentage of the judgment debtor's wages that was subject to garnishment decreased from 25% to 10%, as provided in the Act, the judgment debtor's request to have the garnishment quashed was denied.



Both of these recent cases reflect some of the questions that the Court of Appeals acknowledged would exist when it issued its April 30, 2024 opinion. Additional challenges to the Act and its application are sure to follow and, eventually, judgment creditors and judgment debtors alike will benefit from the additional interpretation provided in written decisions. These fact-specific challenges will eventually be resolved, but in the meantime, creditors should take note of the increased protections afforded to judgment debtors in light of the Act. One thing is certain—the Act is not unconstitutional, and protections afforded to judgment debtors have increased. Not only are there increased protections afforded to judgment debtors, but the assets of debtors that are available to judgment creditors attempting to enforce judgments and collect debts are now more limited.

Any judgment creditor should also keep in mind the federal statutory

scheme that protects debtors—the Fair Debt Collection Practices Act (“FDCPA”). Judgment creditors who run afoul of the FDCPA face exposure in the form of monetary damages and statutory penalties. The reality is that a prudent judgment creditor needs to consider the risks and rewards associated with pursuing collection efforts, and should seek legal advice in determining the cost-benefit analysis of any specific course of action.

Additionally, judgment creditors may want to review comments in our previous article on this subject, which was included in the firm’s Spring/Summer 2023 Newsletter. Creditors should consider the changes to Arizona’s exemption statutes and reevaluate whether the cost of obtaining, pursuing, and enforcing judgments is truly worthwhile, and perhaps how this should factor into their decisions to extend credit in certain cases. More proactive creditors should consider protecting themselves in advance by seeking

## HELP TO RECOVER

If you need assistance with evaluating your rights and remedies in light of the recent changes brought about by Proposition 209, please contact the attorneys at Tiffany & Bosco, P.A.

non-exempt property as security for their loans. How Arizona courts will interpret the infinite number of scenarios that will arise under the Act is unknown at this point, but consulting with experienced attorneys can aid prudent creditors in evaluating the options, risks, and rewards of pursuing a specific course of action.

<sup>1</sup>*Arizona Creditors Bar Association, Inc. v. State*, 549 P.3d 205 (Ariz. App. April 30, 2024).

<sup>2</sup>*HJ Ventures, LLC v. Candelario*, 2024 WL 449970, at \*2 (Ariz. App. Feb. 6, 2024).

<sup>3</sup>*Silence v. Betts*, 2024 WL 3198383 (Ariz. App. June 27, 2024).

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