2024 ARIZONA LEGISLATIVE AND CASELAW UPDATE, INCLUDING AN OVERVIEW OF THE CORPORATE TRANSPARENCY ACT

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2024 ARIZONA REAL ESTATE CASE LAW UPDATE

By: Patricia A. Premeau, Esq.

I. Introduction

Our Appellate Courts have had an active twelve months in the real estate arena, providing published opinions addressing numerous real estate issues, including but not limited to:

- Whether a landlord's lien trumps a lender's lien when a prominent law firm defaults on both the lease and the loan.

- Whether a mobile home that is used as a residence qualifies for a homestead exemption.

- Whether homeowners can recover severance damages, including proximity damages, for the loss of easements in Common Areas taken for freeway expansion project.

- Whether a tenant must first ask that the landlord comply with the landlord's statutory obligation to provide an itemized list of deductions from a refundable security deposit before the landlord has any obligation to refund the security deposit.

And not to mention the National Association of Realtors® settlement, which includes the following terms (source: https://www.nar.realtor/the-facts/nar-settlement-faqs)

- "NAR has agreed to put in place a new rule prohibiting offers of compensation on the MLS. Offers of compensation could continue to be an option consumers can pursue off-MLS through negotiation and consultation with real estate professionals. And sellers can offer buyer concessions on an MLS (for example—concessions for buyer closing costs). This change will go into effect August 17, 2024."

- "[R]equire MLS Participants working with buyers to enter into written agreements with their buyers before touring a home. This change will go into effect August17, 2024."

- "NAR would pay $418 million over approximately four years."

- "NAR continues to deny any wrongdoing[.]"

The court granted preliminary approval of the settlement on April 24, 2024, and a final approval hearing is scheduled for November 26, 2024. Class notice will be sent on or after August 17, 2024 – the date the practice changes take effect.

II. The Survival of the Consumer Financial Protection Bureau

In *Consumer Financial Protection Bureau v. Community Financial Services Association of America*, 601 US __ (2024): decided May 16, 2024, certain trade associations representing payday lender and credit-access businesses brought this suit challenging the funding scheme of the Consumer Financial Protection Bureau ("CFPB") after the CFPB promulgated the regulation prohibiting lenders from trying to obtain funds through preauthorized means after two (2) consecutive attempts failed for lack of funds.

The United States Supreme Court (7-2) found that the CFPB's funding scheme does not violate the Appropriations Clause (Art. I §9, cl.7), where Congress has permitted the CFPB to withdraw from the Federal Reserve System, an amount that the CFPB deems reasonable to carry out its duties and responsibilities.

But what does this have to do with real estate, you may ask?

The Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §§ 2601–2617, signed into law in December 1974 and became effective June 20, 1975, was originally enforced by the U.S. Department of Housing & Urban Development (HUD). Then, in 2011, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act") created a new federal agency, the CFPB. The Dodd-Frank Act transferred enforcement and rule-making authority to the CFPB from other federal agencies such as the HUD and the Federal Reserve Board. The CFPB has significantly increased enforcement of various federal laws and rules including RESPA and its implementing regulation, Regulation X.

RESPA has gone through a number of changes and amendments since1974, all with the intent of informing consumers of their settlement costs and prohibiting "kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services." *Galiano v. Fidelity Nat. Title Ins. Co*., 684 F.3d 309, 313-14 (2nd Cir. 2012) (quoting 12 U.S.C. § 2601(b)(2)). "RESPA § 8(a) prohibits kickbacks for referrals of real estate settlement business." *Galiano*, 684 F.3d at 314 (citing RESPA § 8(a), 12 U.S.C. § 2607(a); *Freeman v. Quicken Loans, Inc.,* 132 S.Ct. 2034, 2038 (2012); *Cohen v. JP Morgan Chase & Co.,* 498 F.3d 111, 121 (2d Cir. 2007).

The basic elements of a RESPA § 8 (a) violation are:

1. A payment or thing of value;

2. Given and received pursuant to an agreement to refer settlement business; and

3. An actual referral.

There must be some connection between the thing of value given and received and the agreement to refer business to allege a violation of RESPA. *Galiano*, 684 F.3d at 314. Additionally, the transaction must involve a federally-related mortgage loan. See 12 U.S.C. § 2607(a).

In 1983, RESPA was amended to contain a "safe harbor" exception that permits certain "affiliated business arrangements" (ABAs) if the person making the referral has either an affiliate relationship with or a direct or beneficial ownership interest of more than one percent (1%) in the settlement service provider receiving the referral, but only if:

1. Referrer discloses the arrangement in writing;

2. Consumer is free to reject referral; and

3. Referrer does not receive "thing of value" other than a "return on ownership interest."

The Arizona Department of Real Estate is recently taking a closer look at ABAs. RESPA permits settlement service providers, such as title companies, real estate brokerages, mortgage lenders, etc. to own an interest in another settlement service company, provided the proper disclosures are made.

- Discloses its relationship with the joint venture company when it refers a customer to the mortgage broker or real estate agent company;

- Does not require the customer to use the joint venture mortgage broker or real estate company as a condition for the sale or purchase of a home;

- Does not receive any payments from the joint venture company other than a return on its ownership interest in the company. These payments cannot vary based on the volume of referrals to the joint venture company; and

- The joint venture mortgage broker or real estate company must be a bona fide, stand-alone business with sufficient capital, employees, and separate office space, and must perform core services associated with that industry.

Recently, the Arizona Department of Real Estate has determined that Arizona law imposes additional requirements on ABA disclosures, above and beyond what RESPA requires. This arises, in part, from:

- Arizona Administrative Code ("AAC") R4-28-1101(1) – a real estate licensee owes a fiduciary duty to the client, thereby requiring disclosure of any potential conflict and to act in the client's best interest.

- A.A.C. R4-28-1101(E) – "A real estate salesperson or broker shall not act directly or indirectly in a transaction without informing the other parties in the transaction, in writing and **before** the parties enter any binding

agreement, of a present or prospective interest or conflict in the transaction . . . ." (Emphasis added.)

Practice tip – disclose timely, disclose in writing, disclose clearly, disclose, disclose, disclose!! (And have your clients consult with you to make sure they are complying with both RESPA and the AAC.)

III. An Overview of the Recent Arizona Cases

1. ***Aroca v. Tang Inv. Co. LLC***, 544 P.3d 653 (Ariz. Ct. App. 2024):
   - Trustee's failure to bring an action on the underlying debt within the six (6) year statute of limitations barred it from exercising remedies under deed of trust; hence, causing the lien to be discharged and entitling Trustor to quiet title to certain property under ARS § 12-1104.

2. ***State v. Foothills Rsrv. Master Owners Ass'n, Inc.***, 256 Ariz. 422, 540 P.3d 1236 (Ct. App. 2023), as amended (Dec. 13, 2023):
   - Subdivision Homeowners are not entitled to severance damages, including proximity damages, for the loss of easements in Common Areas taken for freeway expansion project because easements are not parcels.

3. ***PNC Bank, N.A. v. Coury in & for Cnty. of Maricopa***, 544 P.3d 88 (Ariz. Ct. App. 2024):
   - Since "accounts receivable cannot be located, found, seized or used *on* leased premises, they are not subject to statutory landlord's lien." *Id*. at 93.

4. ***San Diego Gas & Elec. Co. v. Arizona Dep't of Revenue***, 256 Ariz. 344, 539 P.3d 136 (Ct. App. 2023), *review granted in part* (Mar. 5, 2024):
   - Depreciation of future cost of removing transmission and distribution property is included in the calculation of full cash value of electric utility plants; however, the cash value cannot be a negative number or be an offset valuation for unrelated construction work in progress.

5. ***Beck v. Neville***, 256 Ariz. 361, 540 P.3d 906 (2024):
   - The party asserting a boundary by acquiescence claim bears the burden of proving, by clear and convincing evidence, "(1) occupation or possession of property up to a clearly defined line; (2) mutual acquiescence by the adjoining landowners in that line as the dividing line between their properties; (3) continued acquiescence for ten years; and, for the reasons stated above, (4) uncertainty or dispute as to the true boundary." *Id*. at 361, ¶ 21, 540 P.3d at 913.

6. ***Teneyck v. Popovich***, 543 P.3d 275 (Ariz. Ct. App. 2024):
    - ARS § 13-1321(D) *does not* require a residential tenant to demand a landlord for an itemized list of deductions from a refundable security deposit.

7. ***Marsh v. Atkins***, 256 Ariz. 233, 536 P.3d 811 (Ct. App. 2023):
    - After making a best interest determination in the favor of the applicant, but prior to granting a Mineral Exploration permit to the applicant, Arizona State Land Department is required to provide notice to surface owners with a right of first refusal; moreover, a failure to provide notice is not a waiver of the owner's rights.

8. ***In re Drummond***, 543 P.3d 1022 (Ariz. 2024):
    - A self-propelled motor home does not qualify as a 'mobile home' under the homestead exemption because it is readily movable and not attached to land. A.R.S. § 33-1101(A)(3) applies to "permanent structure where a person resides." *Id*. 1029.

9. ***Rosenberg v. Sanders***, 256 Ariz. 328, 539 P.3d 120 (2023):
    - Court will not consider post-execution statements of grantor as ninth factor of McCauley's non-exclusive eight factors.

10. ***Estate of Dominguez v. Dominguez***, No. 1 CA-CV 23-0363, 2024 WL 1326302 (Ariz. Ct. App. Mar. 28, 2024):
    - If a forged document is valid on its face, then it will sufficiently operate as a recorded document within the meaning of the statute of limitations pursuant to A.R.S. §12-524.

11. ***Cao v. PFP Dorsey Invs., LLC****, 545 P.3d 459 (Ariz. 2024)*:
    - If a unit owner objects to termination of the condominium, then only the entire sale of the condominium is permitted pursuant to A.R.S. § 33-1128 (C).

12. ***Arcadia Osborn Neighborhood v. Clear Channel Outdoor, LLC***, 256 Ariz. 88, 535 P.3d 932 (Ct. App. 2023) (Zoning):
    - The Court held that in order to bring a claim regarding land use challenges, the Plaintiff must have standing, which must be established by sufficiently alleging particularized harm. General harms such as traffic safety or loss of aesthetic value are not enough to establish particularized palpable injury to have standing.

13. ***Jurju v. Ile***, 255 Ariz. 558, P.3d 926 (Ct. App. 2023):

- "[B]ecause a motion under Eviction Rule 15 [is] not specifically listed among the time-extending motions of Appellate Rule 9(e), filing such a motion does not extend the time for filing a notice of appeal," which is 30 days. *Id*. at 538, 534 P.3d at 929.

14. ***Hammer Homes, LLC v. City of Phoenix***, 256 Ariz. 472, 541 P.3d 597 (Ct. App. 2023):
    - Restatement (Second) of Torts § 552 imposes a duty of care upon City in providing information regarding land use restrictions to developer, as false information can subject City to liability for negligent misrepresentation.

15. ***Centerpoint Mech. Lien Claims, LLC v. Commonwealth Land Title Ins. Co.***, 255 Ariz. 261, 530 P.3d 1151 (Ct. App. 2023), review granted (May 7, 2024):
    - "[In context of insurance,] "coverage" relates to whether an insurance contract will apply to indemnify an insured, while "liability" relates to the amount to which an insurer will indemnify, assuming coverage has been established. . . . if no liability is discernable or possible, as a practical matter, there will be no need to evaluate coverage, making the coverage question irrelevant." *Id*. at 261, 530 P.3d at 1161.

16. ***South Point Energy Ctr. LLC v. Arizona Dep't of Revenue***, 546 P.3d 1130 (Ariz. Ct. App. 2024):
    - In determining whether a state or local tax on non-Indians doing business on the reservations is preempted "courts must consider (1) the extent of the federal and tribal regulations governing the taxed activity; (2) whether the 'economic burden' of the tax falls on the tribe or the non-Indian individual or entity; and (3) the extent of the state interest in justifying the imposition of the taxes." *Id.* at 1136 (internal quotations omitted) (internal citations omitted).

IV. The Deep Dive Into Some of our "Favorite" Cases

Topic: Statute of Limitations to Exercise Remedies Under Deed of Trust.

1. ***Aroca v. Tang Inv. Co. LLC***, 544 P.3d 653 (Ariz. Ct. App. 2024).

Issue: Whether a trustor (Aroca) is entitled to quiet title when Trustee (Tang) failed to bring action on underlying debt or otherwise initiate foreclosure proceedings within A.R.S. § 12-548's six (6) year statute of limitations.

Holding: Trustee's failure to bring an action on the underlying debt within the six (6) year statute of limitations barred it from exercising remedies under the DOT; hence, causing the lien to be discharged and entitling the Arocas to quiet title to certain property under A.R.S. § 12-1104.

Factual and Procedural History: The Arocas (Trustors) executed a promissory note ("Note") and deed of trust ("DOT") where they promised to pay $40,000.00 to Tang Investment (Trustee) for value received, and the Arocas' obligation was secured by certain real property they owned. *Id.* at 654. The Arocas were to make payments until 2012 ("Due Date") when the remaining unpaid balance on the Note became due and owing. *Id.* at 654-55.

After making some initial installments, the Arocas stopped making payments on the Note and eventually defaulted by the Due Date. *Id*. at 655. Ten (10) years after the Due Date, the Arocas demanded Tang Investment release the DOT as it had surpassed the six (6) year statute of limitations to bring an action for the underlying debt. *Id*. When Tang Investment refused, the Arocas brought an action to quiet title, wrongful lien and declaratory relief. *Id*.

Tang Investment filed a motion to dismiss for failure to state a claim, which the Superior Court granted, along with attorneys' fees. *Id*. Accordingly, the Arocas appealed.

Analysis: "'A.R.S. § 12-548 applies to foreclosure action and actions on the underlying debt[;]' [therefore,] the remedy for foreclosure likewise falls with the bar of the debt." *Id*. at 657. (quoting *De Anza Land & Leisure Corp. v. Raineri*, 137 Ariz. 262, 266, 669 P.2d 1339, 1343 (App. 1983)). Further, the Court reasoned that A.R.S. §33-816 specifically states that an action under a deed of trust (including a foreclosure action) must be commenced within the time allotted by the law for bringing an action on the contract securing the deed of trust. *Id*. According to A.R.S. §12-548, such an action must be brought within six (6) years from when the action accrues. *Id*. at 656. Therefore, an action for trustee's sale must be brought within six (6) years of the breach of the deed of trust. *Id*.

Tang Investment's position relied on A.R.S. §33-714(A)(2), purportedly making the lien viable until 2057. *Id*. at 656. However, the Court stated that A.R.S. *§33-714(A)(2)* is not in contradiction with A.R.S. *§33-816* – "§ 33-714 sets forth an outer limit for the expiration of mortgage liens, but contrary to Tang Investment's position, it does not implicate the remedy of foreclosure or the timeframe in which a foreclosure proceeding must be initiated." *Id*.

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Applicable Statutes:

A.R.S. § 33-714 (A)(2): Expiration of Mortgage and Deed of Trust; Applicability:

A. The lien of any mortgage or deed of trust on any real property that is not otherwise satisfied or discharged expires at the later of the following times:

> 2. If the final maturity date or the last date fixed for payment of the debt or performance of the obligation is not ascertainable from the county recorder's records or if there is no final maturity date or last date fixed for payment of the debt or performance of the obligation, fifty years after the date the mortgage or deed of trust was recorded.

A.R.S. § 33-816: Limitation on Action or Sale of Trust Property:

The trustee's sale of trust property under a trust deed shall be made, or any action to foreclose a trust deed as provided by law for the foreclosure of mortgages on real property shall be commenced, within the period prescribed by law for the commencement of an action on the contract secured by the trust deed.

A.R.S. § 12-548: Contract in Writing for Debt; Six Year Limitation; Choice of Law:

A. An action for debt shall be commenced and prosecuted within six (6) years after the cause of action accrues, and not afterward, if the indebtedness is evidenced by or founded on either of the following:

> 1. A contract in writing that is executed in this state.
>
> 2. A credit card as defined in section 13-2101, paragraph 3, subdivision (a).

B. If there is a conflict between another jurisdiction and this state relating to the statute of limitations for a debt action as described in subsection A of this section, applies.

Topic: Eminent Domain.

2. ***State v. Foothills Rsrv. Master Owners Ass'n, Inc.***, 256 Ariz. 422, 540 P.3d 1236 (Ct. App. 2023), as amended (Dec. 13, 2023).

Issue: Whether homeowners are entitled to severance damages, specifically proximity damages for condemnation of their positive and negative easements.

Holding: Subdivision Homeowners are not entitled to severance damages, including proximity damages, for the loss of easements in Common Areas taken for a freeway expansion project because easements are not parcels.

Factual and Procedural History: Fountain Hills Reserve subdivision is made up of 590 single family homes, and the owners of these homes brought an action against the State of Arizona for severance damages. *Id*. at 422, 540 P.3d at 1237. The subdivision's HOA owns two desert parcels for homeowners' benefit and use ("Common Areas"), upon which

homeowners enjoyed a positive easement – to use Common Areas, and a negative easement – to restrict Common Areas to open space. *Id*. Arizona Department of Transportation filed a condemnation action for the Common Areas to expand a freeway. *Id*. The HOA filed an action against the State of Arizona under a Takings Claim, which eventually settled, but it did not preserve proximity damages claim for the homeowners. *Id*. Compensation for value of easements lost is not an issue; rather, the parties disagree whether homeowners are entitled to proximity damages. *Id*. at 422, 540 P.3d at 1238. The Superior Court found for the homeowners on this issue, and the State of Arizona appealed. *Id*.

Analysis: Arizona's eminent domain statutes, A.R.S. §12-1111, *et. seq.*, set forth the formula for damages calculation for condemnation compensation. *Id*. More specifically, property subject to condemnation is entitled to valuation damages and severance damages. *Id*.; A.R.S. §12-1122. Valuation damages compensate for the market value of the *entire* property condemned, and severance damages offer damages for the condemned property that constitutes a smaller part of a larger parcel. *Id*. at 422, 540 P.3d at 1239; A.R.S. § 12-1122(A)(2). "Proximity damages are a form of severance damages that compensate homeowners for the loss in value to their remaining parcel due to its proximity to a newly constructed freeway." *Id*. at 422, 540 P.3d at 1239.

Homeowners brought forth two arguments. First, the homeowners argued that their easements represented the condemned property, and their homes represented the bigger parcel. *Id*. at 422, 540 P.3d at 1239. However, the Court stated that 'parcel' means '*parcel of land*.' *Id*. Further, *part of a larger parcel* implies that there must be condemnation of a smaller parcel and easements are not parcels. *Id*. Positive easement is a non-possessory right to enter and use land, and negative easement is a restrictive covenant. *Id*. Therefore, under this argument, homeowners are not entitled to proximity damages. *Id*.

Second, the homeowners argued that they are entitled to severance damages because their homes were severed from the Common Areas, which represented the larger parcel. *Id*. at 422, 540 P.3d at 1240. However, the Court stated that the larger parcel must be owned by the homeowners, and in this case the Common Areas were owned by the HOA, whereas homeowners only had a right to the Common Areas as easement holders. *Id*.

Applicable Statutes:

A.R.S. § 12-1122: Ascertainment and Assessment of Value, Damages and Benefits:

A. The court or jury shall ascertain and assess:

1. The value of the property sought to be condemned and all improvements on the property pertaining to the realty, and of each and every separate estate or interest in the property, and if it consists of different parcels, the value of each parcel and each estate or interest in the parcel separately.

2. If the property sought to be condemned constitutes only a part of a larger parcel, the damages that will accrue to the portion not sought to be condemned by reason of its severance from the portion sought to be condemned, and the construction of the improvement in the manner proposed by the plaintiff.

Topic: Landlord's Lien.

3. ***PNC Bank, N.A. v. Coury in & for Cnty. of Maricopa***, 544 P.3d 88 (Ariz. Ct. App. 2024).

Issue: Whether statutory landlord's lease pursuant to A.R.S. § 33-362 attaches to accounts receivable.

Holding: Since "accounts receivable cannot be located, found, seized or used *on* leased premises, they are not subject to statutory landlord's lien." *Id*. at 93.

Factual and Procedural History: Jennings, Strouss & Salmon P.L.C ("Firm") leased Premises from Red Cityscape Development ("Red Cityscape"), who has a statutory landlord's lien on "all property placed upon or used on" the Premises. *Id*. at 90. A few months prior to ceasing operations, the Firm received a line of credit from PNC Bank, N.A. ("PNC"), a perfected secured party with a security interest in the Firm's accounts receivable among other property. *Id*. The Firm defaulted and PNC filed a complaint, to which Red Cityscape responded by asserting priority over accounts receivable. *Id*. The Superior Court ruled in favor of Red Cityscape by stating that while accounts receivable are intangible, they may be used on the premises. *Id*. PNC petitioned for a special action relief.

Analysis: Through statutory interpretation to determine the scope of 'property,' the Court determined that for purposes of a statutory landlord's lien, accounts receivable are 'things in action,' thus they are property in the context of A.R.S. §33-362. *Id*. at 92. However, the statutory language of A.R.S. §33-362 – "placed upon or used on," limits the scope of property to physical and tangible property. *Id*.

The accounts receivable were not *placed on* the Premises because bills, invoices, and other account records maintained on the property are not themselves accounts receivable as the right to payments exists with or without such documents. *Id*. at 92-93. The accounts receivable were not *used on* the Premises. *Id*. at 93. The Court looked at A.R.S. §§ 33-361(D), -362(B) collectively and determined that property located on premises is one that can be found and seized – so the property must be physically present on the premises when said property is put to use. *Id*.

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Applicable Statutes:

A.R.S. § 33-361(D): Lien on Unpaid Rent:

D. If the tenant refuses or fails to pay rent owing and due, the landlord shall have a lien on and may seize as much personal property of the tenant located on the premises and not exempted by law as is necessary to secure payment of the rent. If the rent is not paid and satisfied within sixty (60) days after seizure as provided for in this section, the landlord may sell the seized personal property in the manner provided by section 33-1023.

A.R.S. § 33-362(B): Landlord's Lien for Rent:

B. The landlord may seize for rent any personal property of his tenant found on the premises, but the property of any other person, although found on the premises, shall not be liable therefor. If the tenant fails to allow the landlord to take possession of such property, the landlord may reduce the property to possession by an action to recover possession, and may hold or sell the property for the payment of the rent.

Topic: Tax Valuation for Public Utilities Properties.

4. ***San Diego Gas & Elec. Co. v. Arizona Dep't of Revenue***, 256 Ariz. 344, 539 P.3d 136 (Ct. App. 2023), *review granted in part* (Mar. 5, 2024).

Issue: Whether future cost of removal for electrical transmission and distribution property can be included as a component of depreciation in calculating full cash value of such property pursuant to A.R.S. § 42-14154 (B).

Holding: Depreciation of future cost of removing transmission and distribution property is included in the calculation of full cash value of electric utility plants; however, the cash value cannot be a negative number or be an offset valuation for unrelated construction work in progress.

Factual and Procedural History: Arizona's Department of Revenue ("ADR") must annually assess taxes based on the full cash value of all properties owned by public utilities as required by statutory law. *Id*. at 344, 539 P.3d at 138. In compliance with the law, SDG&E filed an annual valuation report for an interstate electrical transmission line. *Id*. In the annual reporting, SDG&E reported the cost of original plant in service subject to accumulated depreciation – including 'the cost of removal for its electrical transmission and distribution property,' which yielded to a full cash value of a negative number. *Id*. at 344, 539 P.3d at138-39. This negative number was then reported by SDG&E to offset the construction work in progress, which resulted in a net property full cash value of around one million dollars. *Id*. ADR rejected the cost of removal and instead valued the property at around twelve million dollars. *Id*. SDG&E filed this action, and the tax Court granted a summary judgment in its favor. *Id*. ADR appealed. *Id*.

Analysis: The Court stated that while A.R.S. §42-14154(F), (G)(2) mentions "related accumulated provision for depreciation" ("Term"), the statute only provides a definition for "depreciation." *Id*. at 344, 539 P.3d at 139-40. The Court looked at FERC's USOA,

which includes the costs of removal as a component of accumulated depreciation of service company property. *Id*. at 344, 539 P.3d at 141; 12 C.F.R. §367.1080; 68 Fed. Reg. 19610-01.

Further, the Court looked at the alterative theory that ADR plead – that even if removal cost is to be included, the cash value cannot be a negative number or be an offset valuation for unrelated construction work in progress. *Id*. at 344, 539 P.3d at 139. "[A]pplying a sensible construction to avoid absurd results," the Court stated accumulated depreciation reducing full cash value of plant to below zero is absurd and not the legislative intent. *Id*. at 344, 539 P.3d at 140 (internal quotation and citation omitted). Lastly, related accumulated depreciation only reduces the original plant in service full cash valuation not the value of construction work in progress as that is a separate calculation in itself. *Id*.

Topic: Boundary by Acquiescence.

5. ***Beck v. Neville***, 256 Ariz. 361, 540 P.3d 906 (2024).

Issue: Whether Arizona recognizes a cause of action under boundary by acquiescence, if so, what are the required elements.

Holding: Arizona recognizes a cause of action for boundary by acquiescence, which can be utilized by parties to recognize a mutual boundary when the true boundary between adjacent properties is unknown. *Id. at* 361, 540 P.3d at 910.

Rule: The party asserting a boundary by acquiescence claim bears the burden of proving, by clear and convincing evidence, "(1) occupation or possession of property up to a clearly defined line; (2) mutual acquiescence by the adjoining landowners in that line as the dividing line between their properties; (3) continued acquiescence for ten years; and, for the reasons stated above, (4) uncertainty or dispute as to the true boundary." *Id*. at 361, 540 P.3d at 913.

Factual and Procedural History: The Becks and Nevilles bought adjoining properties. *Id*. at 361, 540 P.3d at 909. In 2004, the Becks improved the landscaping of their property. *Id*. During this process the landscapers mistakenly installed stamped concrete paver bricks, which resulted in it appearing that the Nevilles' property included a 135 square foot driveway on the Becks' property – the area in dispute. *Id*. Later in 2019, the Becks remodeled their backyard, which eventually required digging up the disputed area. *Id*. at 361, 540 P.3d at 909-10. They notified the Nevilles that they would be digging up the brick pavers for the required work and would eventually place it at the true property line, essentially taking away the additional driveway space from the Nevilles. *Id*. at 361, 540 P.3d at 910. In response, the Nevilles objected stating that the disputed property belonged to them by adverse possession and boundary by acquiescence. *Id*. The Becks brought a claim to quiet title to the disputed area, and the Nevilles brought a counterclaim for quiet title under the theories of adverse possession and boundary by acquiescence. *Id*.

The trial Court granted summary judgment in favor of the Becks. The Nevilles appealed. The Court of Appeals reversed, and the case eventually made it to the Arizona Supreme Court.

Analysis: The Nevilles did not show that the Becks agreed that pavers marked the property boundary; therefore, the Nevilles did not establish a boundary by acquiescence.[1] *Id*. at 361, 540 P.3d at 915.

The party asserting a boundary by acquiescence claim bears the burden of proving, by clear and convincing evidence. *Id*. at 361, 540 P.3d at 909. Due to the novelty of the issue, the Court proceeded to discuss all the elements.

a. *Uncertainty of true boundary line:* Where the true boundaries of adjacent lots can easily be determined, a claim for boundary by acquiescence will fail as a matter of law. *Id*. Here, the public records showcased the true boundary, and the Nevilles conceded that the disputed area was originally within the formal boundaries of the Beck property. *Id.* Therefore, there is no uncertainty or dispute of a true boundary line. *Id*.
b. *Occupation or possession up to a clearly defined line:* The Court stated that in order to prove this element, one must occupy the property in a manner where non-claimant is put on notice. *Id*. The Nevilles did not present sufficient evidence. While the Nevilles asserted that they parked their car on their driveway, which included the disputed property, the Court stated it was not sufficient: the Nevilles partially intruded on the Becks' property while parking on their own driveway. *Id*. There is lack of evidence that all 135 square feet were used for the parking. *Id*. Therefore, it is an occasional and limited use, which is insufficient to put the Becks on notice as to the entirety of the 135 square feet was being claimed by the Nevilles. *Id*.
c. *Mutual acquiescence by the adjoining landowners:* There must be a mutual recognition of the boundary line. *Id*. at 361, 540 P.3d at 916. While the Becks installed the pavers, the Court reasoned that an owner can install pavers on his own property without disposing of his property not within that boundary. *Id*. at 361, 540 P.3d at 917. The intent to establish a barrier between adjoining properties is not the same as the intent to establish a boundary line. *Id*. (citing *Sauter v. Miller*, 2018 ND 57, 907 N.W.2d 370, 375). There is no evidence that the parties decided that the pavers marked the new boundary. *Id*. at 361, 540 P.3d at 917.
d. *Continued acquiescence for a sufficient period of time:* While the Nevilles might have met the ten (10) year time frame to establish a claim for boundary by acquiescence, they failed to meet all other elements. *Id.*

[1] The Nevilles also did not successfully claim title to the disputed area through adverse possession either. *Id*. at 361, 540 P.3d at 918.

The concreate brick pavers should be more towards the left (Nevilles' property).

***Nevilles' Property to the left, and Becks' Property to the right.

Topic: Landlord/Tenant.

6. ***Teneyck v. Popovich***, 543 P.3d 275 (Ariz. Ct. App. 2024).

Issue: Whether A.R.S. § 13-1321(D) requires a residential tenant to demand that the landlord provide an itemized list of deductions from a refundable security deposit before landlord has any obligation to refund the security deposit.

Holding: A.R.S. § 13-1321(D) *does not* require a residential tenant to make a demand to the landlord to provide an itemized list of deductions from a refundable security deposit.

Factual and Procedural background: Landlord (Popovich) appealed a Superior Court's judgment in favor of Tenants (Teneycks). *Id*. at 276. The parties entered into a one (1) year residential lease. *Id*. Prior to the completion of the lease, in addition to the unhabitable residence, the relationship between parties dwindled, and Tenants terminated the lease. *Id*. Tenants timely demanded the return of their refundable security deposit. *Id*. Tenants filed this suit against Landlord for refusing to return the security deposit and for not providing an itemized list of deductions. *Id*. Superior Court ruled in favor of Tenants. *Id*.

Analysis: Tenants are not required by statute to demand an itemized list of deductions from a security deposit. *Id*. The Court rejected Landlord's argument that unless Tenants make a written request for an itemized list of deductions, Landlord is not obligated to provide one.

Id. at 278. According to this argument, Landlord could hold on to the security deposit indefinitely. *Id*. The Court reasoned that according to the statutory scheme of A.R.S. §1321(G) "at the end of tenancy all refundable deposits shall be refunded to the tenant pursuant to this section," unless the landlord itemizes any deductions and furnishes a timely and proper written notice of such deductions to the tenant. *Id*. at 277-78. Here, the Tenants timely made a written demand for a refund of the security deposit so that allowed Landlord fourteen (14) days to either refund the security deposit or provide an itemized list of deductions from the refundable security deposit. *Id*. at 278.

Applicable Statutes:

A.R.S. § 13-1321(D), (G): Security Deposits:

D. On termination of the tenancy, property or money held by the landlord as prepaid rent and security may be applied to the payment of all rent, and subject to a landlord's duty to mitigate, all charges as specified in the signed lease agreement, or as provided in this chapter, including the amount of damages which the landlord has suffered by reason of the tenant's noncompliance with section 33-1341. Within fourteen days, excluding Saturdays, Sundays or other legal holidays, after termination of the tenancy and delivery of possession and demand by the tenant the landlord shall provide the tenant an itemized list of all deductions together with the amount due and payable to the tenant, if any. Unless other arrangements are made in writing by the tenant, the landlord shall mail the itemized list and any amount due, by first class mail, to the tenant's last known place of residence. If the tenant does not dispute the deductions or the amount due and payable to the tenant within sixty days after the itemized list and amount due are mailed as prescribed by this subsection, the amount due to the tenant as set forth in the itemized list with any amount due is deemed valid and final and any further claims of the tenant are waived.

G. During the term of tenancy the landlord may use refundable security deposits or other refundable deposits in accordance with any applicable provisions of the property management agreement. At the end of tenancy, all refundable deposits shall be refunded to the tenant pursuant to this section.

Topic: Mineral Exploration Permits.

7. ***Marsh v. Atkins***, 256 Ariz. 233, 536 P.3d 811 (Ct. App. 2023).

Issue: Whether Arizona State Land Department ("ASLD") erred in rejecting an applicants Mineral Exploration Permit ("MEP") application based on an exercise of first rights of refusal by surface owners of property subject to MEPs.

Holding: After making a best interest determination in the favor of the applicant, but prior to granting a Mineral Exploration permit to the applicant, ASLD is required to provide notice to surface owners with a right of first refusal; moreover, a failure to provide notice is not a waiver of the owner's rights.

Factual and Procedural History: This lawsuit commenced due to two mineral exploration permits (MEP). *Id*. at 233, 536 P.3d at 813. After Marsh applied for these permits, ASLD was required to provide Marsh with a written notice within thirty (30) and forty five (45) days notifying him of whether the lands subject to the application are open for exploration. *Id*.

Marsh received a notice way past the statutorily provided timeline, denying his application. *Id*. Eventually, ASLD notified surface owners of properties subject to MEPs. *Id*. Marsh requested an administrative hearing for the denial. *Id*. at 233, 536 P.3d at 814. ASLD and Marsh entered into settlement discussions, during which ASLD admitted to not having sufficient reasons for denial. *Id*. After the discussions, the owners asserted their first right of refusal, and ASLD *orally* notified Marsh of this owners' assertion of new rights of refusal. *Id*. Administrative law judge ruled in favor of Marsh and stated that since there wasn't a sufficient reason for the initial denial, there is no basis for which Marsh's application may be denied. *Id*.

ALJ recommended granting Marsh's application. *Id*. ASLD reviewed the recommendation and rejected it, stating that the owners properly executed the first rights of refusal. *Id*. Marsh appealed to the Superior Court, which affirmed the ASLD's decision to deny application because of the owner's exercise of their rights. *Id*.

Analysis: A.R.S. §27-251(B) and A.R.S. §37-231(E) are meant to be read together since both statutes relate to MEPs and provide ASLD the bases to deny the MEP applications. *Id*. at 233, 536 P.3d at 815.

A.R.S. §27-251(B) provides that ASLD can decide if the permit is in the best interest of trust; A.R.S. §37-231(E), states similar language. *Id*. Therefore, under A.R.S. § 27-251 (B), ASLD has a duty to grant permits after determining whether the permits are in the best interest of the trust. *Id*. at 233, 536 P.3d at 816.

However, there is one step between this determination and the granting of the permit. *Id*. Once the determination has been made that the permit is in the best interest of the trust, an owner's right of first refusal is triggered. *Id*. at 233, 536 P.3d at 816-17. So once ASLD finds the best interest is favorable to the applicant, then ASLD must notify the owner. *Id*. at 233, 536 P.3d at 817.

Owners don't need to independently check whether an application is filed for their property. *Id*. at 233, 536 P.3d at 818. To comply with the due process, ASLD sends notice to owners. *Id*. at 233, 536 P.3d at 817-18. Applicants' interests are subservient to the landowner's rights. *Id*. at 233, 536 P.3d at 817. ASLD failed by not providing a notice to Marsh within thirty (30) and forty five (45) days as required by A.R.S. §27-251 (B). *Id*. at 233, 536 P.3d at 819. However, that failure does not stop the owners from exercising their rights. *Id*. It is not a waiver. *Id*.

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Applicable Statutes:

A.R.S. § 27-251(B): Application for Mineral Exploration Permit:

B. Not less than thirty days nor more than forty-five days from the filing of the application with the department, provided there is no prior application for a mineral exploration permit involving the same state land then pending before the department, or if such prior application is then pending but is subsequently cancelled, not more than thirty days after it is cancelled, the department shall mail to the applicant at the address shown on the application a written notice designating the state land that is described in the application and that, at the time the application was filed with the department, was open to application, the amount of rental required to be paid for the mineral exploration permit as herein provided, and whether a bond will be required under the provisions of section 27-255 as a condition to issuance of such permit. If, within thirty days after the mailing of such notice, the applicant pays to the department as rental for the permit the amount of two dollars per acre for each acre of state land designated in the notice and files with the department the bond, if any, required under section 27-255, and if the commissioner finds that issuing the permit is in the best interest of the trust, the commissioner shall issue to the applicant a mineral exploration permit for the state land designated in the notice. The commissioner may deny the application for any of the following reasons:

1. The application was not made in good faith.

2. The proposed exploration or possible future mining activities would not be the highest and best use of the trust lands.

3. The value and income potential of surrounding trust lands would be adversely affected and the benefit from proposed exploration and future mining activity cannot reasonably be expected to be greater than the diminished value to those surrounding trust lands.

4. The proposed operations would violate applicable state or federal law.

5. The commissioner determines that the proposed exploration activities or possible future mining activities will create a liability to the state greater than the income from the proposed operations.

A.R.S. §37-231(E)(2): State Lands Subject to Sale; Rights Reserved in Lands Sold; State Lands not Subject to Sale; Development Agreements:

E. Notwithstanding the provisions of subsection C of this section, all state lands sold after March 18, 1968, shall be sold with the reservation that all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, geothermal resources, coal, metals, minerals, fossils, fertilizer of every name and description, together with all uranium, all thorium or any other material which is or may be determined by the laws of the United States or of this state, or decisions of court, to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, and the exclusive right thereto, on, in, or under such land, shall be and remain and be reserved in and retained by the state, regardless of any sale under this section and the issuance of any certificate of purchase to any purchaser of state lands pursuant to this section, provided, that the reservation shall not include common variety minerals as defined in section 27-271, subject to the following:

2. The mineral rights reserved to the state in the lands sold shall be closed to entry and location as a mineral claim or claims, but the department may issue, upon application, mineral exploration permits embracing the reserved mineral rights when such issuance is deemed in the best interest of the state, provided that the surface owner or owners shall have the first right of refusal to acquire such mineral exploration permits.

Topic: Homestead Exemption.

8. ***In re Drummond***, 543 P.3d 1022 (Ariz. 2024).

Issue: Whether a self-propelled motor home qualifies as a mobile home for the purposes of Arizona's Homestead exemption under A.R.S. § 33-1101(A)(3).

Holding: A self-propelled motor home does not qualify as a 'mobile home' under the homestead exemption because it is readily movable and not attached to land. A.R.S. § 33-1101(A)(3) applies to "permanent structure where a person resides." *Id*. 1029.

Factual and Procedural History: The Drummonds filed for bankruptcy, and they claimed that their motor home qualified for an exemption as a 'mobile home.' *Id*. at 1024. The Bankruptcy trustee disagreed. *Id*. Since no Arizona precedent exists regarding this issue, the Bankruptcy judge certified this question to the Arizona Supreme Court. *Id*.

Analysis: In its analysis, the Court looked at the definition of the 'motor home' stated in A.R.S. § 28-4301(19), which essentially means that it is "readily and inherently movable." *Id*. at 1025. Further, the Court looked at A.R.S. § 33-1101(A) to determine the definition of a 'mobile home.' *Id*. at 1026. Subsection (1)(2) and (4) of A.R.S. § 33-1101(A) describe a permanent residence that is attached to the land. *Id*.

A.R.S. § 33-1101(A)**(1)** states a real property that is a dwelling, which is permanently located on the ground. *Id*.

A.R.S. § 33-1101(A)**(2)** states a condominium, which is also permanently located where it is built. *Id*.

A.R.S. § 33-1101(A)**(4)** states a mobile home plus the land where it is located, which "indicates a strong, permanent connection between the land and the mobile home" – physically connected to the land and not readily movable. *Id*. at 1026-27. Otherwise, a debtor could easily park his motor vehicle on a land prior to filing bankruptcy and claim homestead exemption. *Id*.

The Court stated that since the remainder of the subsections of the statute showcase a permanent connection, so must a mobile home under A.R.S. § 33-1101(A)(3). *Id*. at 1027.

The Court further distinguished between subsections (3) and (4), stating that (3) provides protection to those that have a mobile home – that is not readily movable and attached to a permanent location, but those owners do not own the land where the mobile home is attached. *Id*.

Applicable Statutes:

A.R.S. § 33-1101(A): Homestead Exemptions:

A. Any person eighteen years of age or over, married or single, who resides within this state may hold as a homestead exempt from execution and forced sale, not exceeding $250,000.00 in value, any one of the following:

1. The person's interest in real property in one compact body on which exists a dwelling house in which the person resides.

2. The person's interest in one condominium or cooperative in which the person resides.

3. A mobile home in which the person resides.

4. A mobile home in which the person resides plus the land on which that mobile home is located.

Topic: Post-execution Statements of Grantor.

9. ***Rosenberg v. Sanders***, 256 Ariz. 328, 539 P.3d 120 (2023).

Issue: Whether statements made by grantor after executing a deed should be considered as a ninth factor of the eight non-exclusive factors stated in: *In re Estate of McCauley* ("*McCauley*"), 101 Ariz. 8, 10–11, 415 P.2d 431, 433–34 (1966).

Holding: Court will not consider post-execution statements of a grantor as a ninth factor of McCauley's non-exclusive eight factors.

Factual and Procedural History: Grantor, an unmarried man, executed a beneficiary deed granting two properties to his domestic partner ("Beneficiary"). *Id*. at 328, 539 P.3d at 122. Grantor's niece sued the Beneficiary claiming that the deed was a product of undue influence due to Grantor's post-execution statements claiming that he no longer trusted the Beneficiary and was afraid of her. *Id*. at 328, 539 P.3d at 122-123.

After applying the McCauley factors, the trial Court granted summary judgment in favor of the Beneficiary. *Id*. at 328, 539 P.3d at 122. The Court of Appeals reversed stating that Grantor's statements are a ninth factor to consider for an undue influence. *Id*. Arizona Supreme Court granted review. *Id*.

Analysis: 'Post-execution statements of grantor' is not a ninth factor, rather it is 'type of evidence' that can be used to support other McCauley factors as long the statements are relevant and admissible under Arizona Rules of Evidence. *Id*. at 328, 539 P.3d at 125. For

such statements to be relevant to an undue influence claim, they must show the Grantor's statement of mind, mental health, or surrounding circumstances **at the time of execution of the document.** *Id*. at 328, 539 P.3d at 126.

McCauley factors:

"Whether the alleged influencer has made fraudulent representations to the testat[or]; whether the execution of the will was the product of hasty action; whether the execution of the will was concealed from others; whether the person benefited by the will was active in securing its drafting and execution; whether the will as drawn was consistent or inconsistent with prior declarations and plannings of the testat[or]; whether the will was reasonable rather than unnatural in view of the testat[or's] circumstances, attitudes, and family; whether the testat[or] was a person susceptible to undue influence; and whether the testat[or] and the beneficiary have been in a confidential relationship." *Rosenberg v. Sanders*, 256 Ariz. 328, 539 P.3d 120, 125 (2023). *McCauley*, 101 Ariz. at 10, 415 P.2d at 433-34 (cleaned up).

Topic: Statute of Limitations for an Action to Recover Claimed City Lot.

10. ***Estate of Dominguez v. Dominguez***, No. 1 CA-CV 23-0363, 2024 WL 1326302 (Ariz. Ct. App. Mar. 28, 2024).

Issue: Whether an alleged forged deed is subject to the statute of limitations pursuant A.R.S. §12-524.

Holding: If a forged deed is valid on its face, then it will sufficiently operate as a recorded document within the meaning of statute of limitations pursuant to A.R.S. §12-524.

Factual and Procedural History: Plaintiff/Appellant and her husband, deceased at the filing of this claim, conveyed title to certain real property to their son and their daughter-in-law as husband and wife. *Id*. at *1.

The deed was recorded in 2003. *Id*. After the death of her son, Plaintiff/Appellant found the deed and stated it was forged by the daughter-in-law, Defendant/Appellee. In 2020, seventeen (17) years after the conveyance of the subject deed, Plaintiff/Appellant brought an action to quiet title and claiming a forged deed pursuant to A.R.S. §33-420. *Id*. Defendant/Appellee filed a competing claim for quiet title. *Id*. In the first order, the Court granted summary judgment in favor of Defendant/Appellee for competing quiet title claims, stating that the alleged forged deed does not escape the five (5) year statute of limitations of A.R.S. §12-524. *Id*. at *2. Plaintiff/Appellant died, and her estate stepped in. *Id*. In the second order, the Court granted summary judgment in favor of Defendant/Appellee for the estate's false documents claim. *Id*. Estate appealed. *Id*.

Analysis: The Court of Appeals reviewed the first order and determined that even if the deed is alleged to be forged, it is still valid on its face; thus, subject to the five (5) year statute of limitations of A.R.S. §12-524. *Id*. at *3-*4. The deed is valid on its face because it accurately describes the property, and the signatures of the grantors are notarized. *Id*. at *4. Further, the Court stated that the Arizona Supreme Court has held that void deeds are

subject to the statute of limitations of A.R.S. §12-524. *Id*. at *3; *Nicholas v. Giles*,102 Ariz. 130, 131, 426 P.2d 398, 399 (1967). Therefore, as long as the deed is valid on its face, despite being allegedly forged, the court will apply A.R.S. §12-524 to the deed. *Id*.; *Sparks v. Douglas & Sparks Realty Co*., 19 Ariz. 123, 127, 166 P. 285 (1917).

On review of the second order of claim of false documents pursuant to A.R.S. §33-420(A), the Court determined that this claim is also subject to the four (4) year statute of limitation prescribed in A.R.S. § 12-550. [2] *Id*. at *5. Thus, by filing a complaint seventeen (17) years after the deed was recorded, the claim of false documents was barred pursuant to A.R.S. §33-420(A). *Id*.

Applicable Statutes:

A.R.S. §33-420: False Documents; Liability; Special Action; Damages; Violation; Classification:

A. A person purporting to claim an interest in, or a lien or encumbrance against, real property, who causes a document asserting such claim to be recorded in the office of the county recorder, knowing or having reason to know that the document is forged, groundless, contains a material misstatement or false claim or is otherwise invalid is liable to the owner or beneficial title holder of the real property for the sum of not less than five thousand dollars, or for treble the actual damages caused by the recording, whichever is greater, and reasonable attorney fees and costs of the action.

A.R.S. §12-524: City Lot Claimed under Recorded Deed; Five-year Limitation:

An action to recover a lot located in a city or town from a person having a recorded deed therefor, who claims ownership and has paid the taxes thereon, shall be brought within five years after the cause of action accrues, and not afterward, provided that the person against whom the action is brought, by himself or his grantors, has claimed ownership thereof and has paid the taxes thereon for at least five consecutive years next preceding the commencement of such action.

Topic: Condominium Termination.

11. ***Cao v. PFP Dorsey Invs., LLC***, 545 P.3d 459 (Ariz. 2024).

Issue: Whether A.R.S. § 33-1128 authorized taking of private property for private use in violation of the Arizona Constitution, and whether A.R.S. § 33-1128 (C) required a sale of all units of condominium if any units are to be sold pursuant to the termination agreement.

Holding: If a unit owner objects to the termination of the condominium, then only the entire sale of the condominium is permitted pursuant to A.R.S. § 33-1228 (C).

Factual and Procedural History: When the developer constructed the Dorsey Place Condominiums ("Dorsey Place"), he recorded CC&Rs ("Declaration"), which stated that Dorsey Place is subject to the Condominium Act, A.R.S. § 33-1201, *et. seq. Id*. at 461. Je Cao and Haining Xia (the "Xias") bought a condo in Dorsey Place subject to the

[2] Court did not consider defenses, such as equitable tolling, because the Estate did not raise these defenses in the trial court.

Declaration. *Id*. at 462. Later that year, PFP Dorsey Investment, LLC ("PFP") took ownership of ninety (90) out of ninety six (96) condos. *Id*.

During a meeting, the condominium Association presented the remaining six (6) owners with the agreement terminating the condominium, and stated the PFP would buy the remaining condominiums at fair market value, which PFP obtained through an independent appraisal. *Id*. According to the Declaration ninety percent (90%) of the votes were required in order to terminate the condominium; therefore, the termination agreement was finalized without the other six (6) owners' votes because PFP's ownership stake constituted more than ninety percent (90%) of the votes. *Id*. Eventually PFP transferred the title of Xias' condominium to PFP, changed the locks and threw out the Xias' personal property. *Id*. The Xias filed suit on multiple claims including that "§33-1228 was unconstitutional because it authorized the taking of private property for private use." *Id*.

The Superior Court granted the Association and PFP's motion to dismiss. The Xias appealed. The Court of Appeals reversed the Superior Court's judgement dismissing the Xias' claims. *Id*. at 463.

Analysis: The Court did not decide on the unconstitutionality of the A.R.S. § 33-1128 because the Court determined that this issue of termination arose pursuant to the Declaration, not the statute itself. *Id*. at 464. This is an issue of contract law. *Id*. Because the Xias' signed the Declaration, which incorporated the Condominium Act by reference, they consented to the application of it. *Id*. at 465. Further because A.R.S. § 33-1128 is incorporated by reference into the Declaration, the Court analyzed subsection (C) of the statute, while determining whether all units are required to be sold when a unit owner objects. *Id*. Applying the plain text of the statute mechanism, the Court stated that A.R.S. § 33-1128(C), allows for two circumstances: (1) all units are to be sold if a unit owner objects to the sale, or (2) all units or parts of a condominium can be sold upon the consent of all unit owners whose property is subject to the sale. *Id*. Therefore, PFP and the Association were not permitted to just convey the Xias' unit to PFP. *Id*. at 466. Rather, the Association needed to sell all the units to PFP due to the Xias' objection. *Id*.

Applicable Statutes:

A.R.S. § 33-1128 (C): Termination of Condominium.

C. At least thirty days before recording a termination agreement, the board of directors of the association shall convene a regular or special meeting of the board of directors at which a person or entity that purports to have the agreement of at least the percentage of the votes in the association specified in subsection A or B of this section, as applicable, or any larger percentage if required, shall produce and make available to the unit owners copies of a signed notarized statement that the owner of a unit has executed a termination agreement. The person or entity shall produce copies of a statement for each unit owner who has agreed to the termination, or may produce the signed termination agreement that includes a sufficient number of unit owners. Any meeting called pursuant to this subsection shall be noticed as otherwise provided by law, except that the board may not take action by written consent or any other method that does not provide for an actual meeting that is open to all the unit owners. Any termination agreement that is recorded without full compliance with this subsection is invalid.

2024 ARIZONA LEGISLATIVE AND CASELAW UPDATE, INCLUDING AN OVERVIEW OF THE CORPORATE TRANSPARENCY ACT

Presented by:

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2024 ARIZONA REAL ESTATE LEGISLATIVE,

INCLUDING THE CURRENT STATUS OF THE

CORPORATE TRANSPARENCY ACT

By: Patricia A. Premeau, Esq.

I. Introduction

Question: Is there ***any*** sign of improvement in Arizona's ***second*** year of a divided government? Answer: **YES!!!**

Evidence to support this **BOLD** assertion:

- During the Governor's second State of the State address, *only one* legislator, Sen. Anthony Kern (R-Glendale), turned his back to the Governor (twice).
- During the Governor's second State of the State address, *no one* walked out.
- In 2023, Arizona's Governor broke the record for the most vetoes in a single session of the state Legislature (74 and counting as of May 22, 2023). As of today, May 22, 2024, 197 bills have been signed and only 58 have been vetoed.
- Perhaps most significantly, without comment or explanation, the Governor reversed herself and signed the much-beloved "Tamale Bill!"

You can find up to date information on any bill, including an overview, bill status, documents, and other information on the Arizona Legislature's website:

https://apps.azleg.gov/BillStatus/BillOverview?SessionID=127

The Governor's website also provides information as to those bills that have been signed and those that have been vetoed, including PDFs of the letters explaining each veto:

https://azgovernor.gov/office-arizona-governor/news/2023/05/governor-hobbs-legislative-action-update-1

The State Bar also has a legislative newsletter called "Bar Track," which is published every Friday during the current Arizona Legislative Session. You can sign up for a weekly email or review prior newsletters (including newsletters from the 2020-2022 legislative sessions) here:

https://www.azbar.org/news-publications/enewsletters/bar-track/

Maricopa County has put together an overview of the Arizona State Legislative Process:

https://www.maricopa.gov/DocumentCenter/View/33995/Arizona-State-Legislative-Process#:~:text=A%20striker%20amendment%20proposes%20to,on%20an%20entirely%20different%20subject.

II. The 2024 Legislative Session's Impact on Real Estate Professionals

Each bill signed into law will take effect ninety (90) days after the Legislature adjourns, so we can expect the effective date to be sometime this fall.

HB 2720 – Accessory Dwelling Units; Requirements (approved 05/21/2024).

The bill received bipartisan support in the Legislature, but cities voiced concerns about the expansion of casitas as short-term rentals. The measure was part of a package deal with HB 2721, which changes zoning in certain cities to allow more housing.

Requires cities with a population of more than 75,000 people to adopt regulations to allow accessory dwelling units, or casitas, on properties zoned for single-family homes.

- At least one attached and one detached accessory dwelling unit;
- At least one additional detached accessory dwelling unit on a lot that is one acre or larger if at least one accessory dwelling unit on the lot is a "restricted affordable dwelling unit" (defined); **and**
- An accessory dwelling unit that is seventy five percent (75%) of the gross floor area of the single-family dwelling on the same lot or parcel or 1,000 square feet, whichever is less.

Prohibits a municipality from: prohibiting the use or advertisement of either the single-family dwelling or any accessory dwelling unit located on the same lot or parcel as separately leased long-term rental housing; requiring a familial, marital, employment or other preexisting relationship between the owner or occupant of a single-family dwelling and the occupant of an accessory dwelling unit located on the same lot or parcel; prohibiting or requiring kitchen facilities in an accessory dwelling unit; requiring that a lot or parcel have additional parking to accommodate an accessory dwelling unit or requiring

payment of fees instead of additional parking; requiring that an accessory dwelling unit match the exterior design, roof pitch or finishing materials of the single-family dwelling that is located on the same lot; setting restrictions for accessory dwelling units that are more restrictive than those for single-family dwellings within the same zoning area with regard to height, setbacks, lot size or coverage or building frontage; setting rear or side setbacks for accessory dwelling units that are more than five (5) feet from the property line; requiring improvements to public streets as a condition of allowing an accessory dwelling unit, except as necessary to reconstruct or repair a public street that is disturbed as a result of the construction of the accessory dwelling unit; requiring a restrictive covenant concerning an accessory dwelling unit on a lot or parcel zoned for residential use by a single-family dwelling. Prohibits a municipality from requiring an accessory dwelling unit to comply with a commercial building code or contain a fire sprinkler. Allows restrictive covenants concerning accessory dwelling units entered into between private parties. Prohibits a municipality from conditioning a permit, license, or use of an accessory dwelling unit on adopting or implementing a restrictive covenant between private parties. Provides that if a municipality fails to adopt these development regulations by January 1, 2025, accessory dwelling units will be allowed on all lots or parcels zoned for residential use in the municipality without limits.

HB 2721 – Municipal Zoning; Middle Housing (approved 05/21/2024).

Along with HB 2720, this bill changes zoning in certain cities to allow more housing.

Stipulates that by January 1, 2026, a city or town with 75,000 or more people must authorize by ordinance and incorporate the development of "duplexes" (Defined), "triplexes" (Defined), "fourplexes" (Defined), "fiveplexes" (Defined) and "townhomes" (Defined) as a "permitted use" (Defined) on all lots zoned for single-family residential use into its development regulations, zoning regulations and other official controls.

Prohibits a city or town from discouraging the development of "middle housing" (Defined) through unreasonable costs, fees, or delays or other requirements and actions which individually or cumulatively make impracticable the permitting, siting or construction of middle housing; restricting middle housing types to less than two floors or a floor area ratio of less than one; setting restrictions or processes for middle housing that are more restrictive than single-family dwellings in the same zone; requiring owner occupancy of structures on the lot; or requiring structures to comply with commercial building codes or contain fire sprinklers.

Precludes the city from requiring more than one off-street parking space per unit.

Specifies that this Act does not prohibit a municipality governing body from allowing: single-family dwellings in areas zoned for single-family dwellings; or additional types of middle housing not required by this Act. Exempts middle housing requirements from applying to: unincorporated areas; areas lacking sufficient urban services; areas not serviced by municipal water and sewer services; areas not zoned for residential use; and unincorporated areas zoned under an interim zoning designation that maintains the area's

potential for planned urban development. Declares that middle housing is allowed on all lots zoned for single-family residential use in a municipality without limitations if the city or town does not adopt required middle housing regulations by January 1, 2026.

HB2325, Backyard Fowl; Regulation; Prohibition (approved 05/21/2024).

Cities must allow residents of a single-family detached residence on one-half acre or less to have up to six (6) chickens, but may require certain conditions as to location, maintenance issues, etc. Cities can make sure that chickens cannot run free. No roosters allowed!

SB1432 – "The Uniform Unlawful Restrictions in Land Records Act" (approved 03/29/2024).

Applies to Planned Communities. Permits an owner of property subject to an unlawful restriction to submit an amendment to remove that restriction to the Recorder of the County where the property is located. Also permits the Association to amend without the vote of the members of the Association.

A.R.S. § 33-535 requires the amendment to include the owner, the real property affected, and the document containing the unlawful restriction, along with a conspicuous statement:

> "This Amendment removes from this deed or other document affecting title to real property an unlawful restriction as defined in Section 33-532, Arizona Revised Statutes. This Amendment does not affect the validity or enforceability of a restriction that is not an unlawful restriction."

HB2110 – Mechanics' Lien; Notice (approved 04/08/2024).

Stipulates that a notice to a property owner involving a mechanic's lien, that is otherwise compliant is not defective because bold-faced type or type size required was not used as prescribed in this law.

HB2129 – Improved Lot or Parcel; Definition (approved 04/02/2024).

Modifies the definition of "Improved lot or parcel" to cover condominiums as defined by state law, within four (4) years after the sales contract is agreed upon.

HB2408 – Property Tax Assessment; Destroyed Property (approved 03/29/2024).

Upon notice by a property owner of a property that has been "destroyed" (defined, such as fire, flood, or other Act of God) after the County Assessor closes the rolls, the County Assessor is permitted to issue a Notice of Proposed Correction per state law. For the purposes of classifying property in accordance with state law, the County Assessor may maintain the property classification in place on the date of destruction for a period of five (5) years or until a verifiable change in use occurs, whichever is sooner. Requires the County Assessor to notify the property owner of the status of the property assessment and classification in accordance with state law related to property tax appeals and reviews.

SB1042 – Title Companies; Recorded Documents; DIFI (approved 04/08/2024).

A bit of background taken from allegations in a pending lawsuit. The lawsuit involves a street project improvement district and assessment in Mohave County. The title company issued a Lender's Policy providing coverage limits of $1,550,000.00. The Commitment and the Lender's Policy did not list the Laughlin Ranch Boulevard Improvement District Development and Waiver Agreement ("Agreement") as an Exception. The lender, in turn sued the title company. The title company, in turn, filed a third-party complaint against the property owners, who had executed an Owner's Affidavit and Indemnity as part of the underlying transaction. The title company and the lender reached a settlement. As of May 22, 2024, the lawsuit remains active between the title company and the property owners.

The new law provides that an agreement to indemnify or hold harmless the title insurer from risks arising from a properly recorded and indexed document is only enforceable if the agreement is in writing and any of the following apply:

1. The instrument was not of record at the time the agreement was executed.

2. The instrument is specifically described in the agreement.

3. The instrument is shown as an exception from coverage in the title insurance policy.

4. The instrument is or secures a monetary obligation of the person, and remains an outstanding and enforceable debt.

5. The agreement indemnifies for or holds harmless against liens arising from work or labor done or professional services, materials, machinery, fixtures or tools furnished on the insured property.

Nothing in this subsection shall affect the enforceability of title warranties provided by a person in a deed or mortgage.

SB1016 – HOA; Flagpoles (approved 04/16/2024).

Allows Homeowners' Associations to limit the number of flagpole displays a member may display to two (2) flagpoles.

HB2119 – HOA; Fees (approved 04/10/2024).

Generally prohibits condominium and planned community associations from assessing fees for transfer of property if the type of transfer is between specific parties as defined in A.R.S. § 11-1134 (i.e., exemptions to Affidavits of Value).

HB 2648 – HOA; Liens (approved 04/10/2024).

Creates two different definitions for two different types of HOA liens. The "common expense lien" is for assessments and fees that are collected for maintenance and repair of common property. "Unit owner expenses" include unpaid fines imposed by the HOA for violations to the covenants, restrictions, and rules of the association. Common expense liens are foreclosable as a last resort, but individual expense liens for fines are NOT foreclosable.

HB2662 – HOA; Meeting Agendas (approved 04/30/2024).

Requires the secretary of the community association to provide an agenda for any membership meeting in advance of such membership meeting by hand delivery, mail, website posting, email, other electronic means, or posting at a community center or other similar location.

HB2698 – Declarant Control; Planned Communities (approved 4/9/2024).

Requires all HOA documents to provide a date of or method for calculating the end of the Declarant Control. For all planned communities, "Declarant Control terminates no later than the date on which the second to last lot in the planned community is conveyed to a buyer."

The "Too Soon to Know at the time of this Deadline" Pending Items.

HB2007 - Subdivided Lands; Civil Penalties.

Would create a civil penalty for a subdivider or real estate agent who violates regulations on subdivided land up to $2,000.00 for each lot where a violation occurs, instead of up to $2,000.00 for "each infraction."

Looks to be on track. Passed out of the House unanimously and out of the Senate Finance by unanimous vote. Awaiting a vote in the full Senate since March. May be just be one of the many bills stalled while focus shifts to budget negotiations.

HB2009 - Subdivisions; Acting in Concert (now Real Estate; Subdivision; Employment Agreements).

Would make it unlawful for a person or group of persons acting in concert to attempt to avoid subdivision laws by acting in concert to divide a parcel of land into six (6) or more lots by using a series of owners or conveyances within a **10-year period**, instead of over **any time period**.

Passed out of the House along party lines. Democrats attempted to amend the bill on the Senate floor, but the motion failed. It was amended by a Republican to make the following changes (and now awaits a final vote in the Senate; if it passes, it will go back to the House for a final vote on these amendments):

- Requires all real estate employment agreements to include, in material terms, an ascertainable amount or rate of broker compensation, rather than the terms of broker compensation.

- Requires a real estate employment agreement: a) for a licensee to represent a buyer in a residential real estate transaction; and b) before the buyer tours any dwelling.

- Requires a real estate employment agreement to be entered into before the broker writes a purchase offer on the buyer's behalf.

- Prohibits a broker who represents a buyer in a residential real estate transaction from receiving compensation from any source that exceeds the rate or amount of broker compensation that is specified in the real estate employment agreement for activities for which a license is required.

HB2023 - Land Divisions; Disclosure Affidavit; Recording.

Would make a series of changes to the affidavit required by law to be filled out and recorded with the deed to the property impacted by the sale, including:

- Requiring disclosure of the water hauling company name, phone number and water supply that services the property if applicable;

- Removing the disclosure noting that the buyer is responsible for verifying the proper replacement and disposal of any applicable solar energy devices;

- Adding a section requiring disclosure of any battery energy storage devices and, if applicable, the company leasing the storage devices;

- Adding a note that it is unlawful for a person or group to attempt to avoid subdivision laws by attempting to divide a property parcel into six (6) or more lots and notes investigation and enforcement responsibility; and

- Requiring disclosure of whether the seller is a trustee in a trustee's sale, a person conducting an execution sale or mortgage foreclosure, or a personal representative of an estate and information is unknown to the seller. Would require the seller, if they are a trustee of a subdivision trust, to provide a disclosure affidavit as required by this section of law.

Awaiting a vote in the full Senate.

III. The Corporate Transparency Act

Overview of the Corporate Transparency Act.

In 2020, the Federal Government enacted the Corporate Transparency Act ("CTA" or the "Act"), which became effective on January 1, 2024. The stated purpose of the Act is to prevent money laundering, terrorism financing, tax fraud, and other financially related crimes in shell or shadow companies. However, the Act places a significant burden on small US businesses who are under threat of severe civil and criminal penalties for non-compliance.

Companies that are covered by the Act include LLCs, corporations, partnerships, and business trusts – basically any type of entity that is formed by filing paperwork with a state or federal agency. Think about your typical homeowners' association – a group of volunteers who are paid nothing for their efforts. Are they covered? Very likely they are.

All US companies existing on January 1, 2024, that are not exempt under the Act, have one year (until December 31, 2024) to submit personal ID information for all "beneficial owners" of the company to the Financial Crimes Enforcement Network ("FinCEN") which is a division of the Department of Treasury. The term "beneficial owner" generally means any individual who either exercises control over the company (such as a manager in an LLC or an officer or director in a corporation) or an individual who owns or controls at least a twenty five percent (25%) interest in the company.

The personal ID information required to be filed for each beneficial owner consists of the following: (1) full legal name; (2) date of birth; (3) current home street address; (4) photo ID such as driver's license or passport, and (5) the ID number. Most important, this information for each beneficial owner must be kept current. If there is any change in the information (such as a new home address or driver's license), the filing must be updated within thirty (30) days.

Individuals who are involved in multiple reporting companies can obtain a FinCEN identifier number which will enable him or her to provide the FinCEN identifier number rather than their personal ID information with each company filing.

There are a number of exemptions from the Act, but the main exemptions that will apply to the average small business are tax-exempt entities, large operating companies, and inactive entities.

Tax exempt entities are defined as entities qualified under IRC § 501(c)(3). Large operating companies are defined as businesses having more than twenty (20) employees on a full-time basis and $5,000,000.00 in tax reported gross revenue in the past year. In short, all for-profit active LLCs, corporations, and partnerships with less than twenty (20) full-time employees or less than $5,000,000.00 in gross income reported on its prior year tax return have one (1) year to comply with the CTA.

Under the Act, an inactive entity means a company that satisfies **each** of the following: it was in existence **before** January 1, 2020, does not hold any assets, is not engaged in business, and does not have income greater than $1000.00 in the past year. In short, any company that was formed after January 1, 2020, or that holds a small bank account or other asset (such as title to real estate) is not exempt under the CTA and must file with FinCEN.

Also, allowing an inactive company formed after January 1, 2020, to be administratively terminated by the Arizona Corporation Commission is not sufficient. To avoid the filing requirements under the Act, the company must be legally terminated by filing Articles of Termination.

New companies that are formed after January 1, 2024, and that are not exempt, are required to file with FinCEN within thirty (30) days of formation. In addition to the beneficial owners, a new company is required to provide the personal ID information of the "company applicant," which is the person who files the paperwork to form the company (usually the attorney or paralegal).

There are severe penalties for willfully failing to file under the Act or filing knowingly false information. The government can impose a civil fine of $500.00 per day, plus a criminal fine of up to $10,000.00 and imprisonment for not more than two (2) years.

Legal Challenges to the Corporate Transparency Act.

On March 1, 2024, a Federal District Court in Alabama rendered a decision declaring the CTA unconstitutional. The decision by the district court only applies to the litigants in that case, and it does not enjoin the enforcement of the Act for other businesses nationwide. It is uncertain whether the decision will be appealed. There may also be other cases in additional states now pending that raise the exact same issue.

Companies formed **prior to January 1, 2024,** have until December 31, 2024, to file an initial report with FinCEN. Existing companies may want to wait a bit before filing with FinCEN to see if Congress will either modify and/or repeal the CTA or if other court decisions come down finding the CTA to be unconstitutional. If nothing changes, we recommend filing with FinCEN rather than running the risk of prosecution and tens of thousands of dollars in attorneys' fees to contest the law.

New companies formed **after January 1, 2024,** have only ninety (90) days after formation to file an initial report with FinCEN. For that reason, we recommend that new companies not delay the filing. Again, the cost of filing is small compared to the cost of litigation.