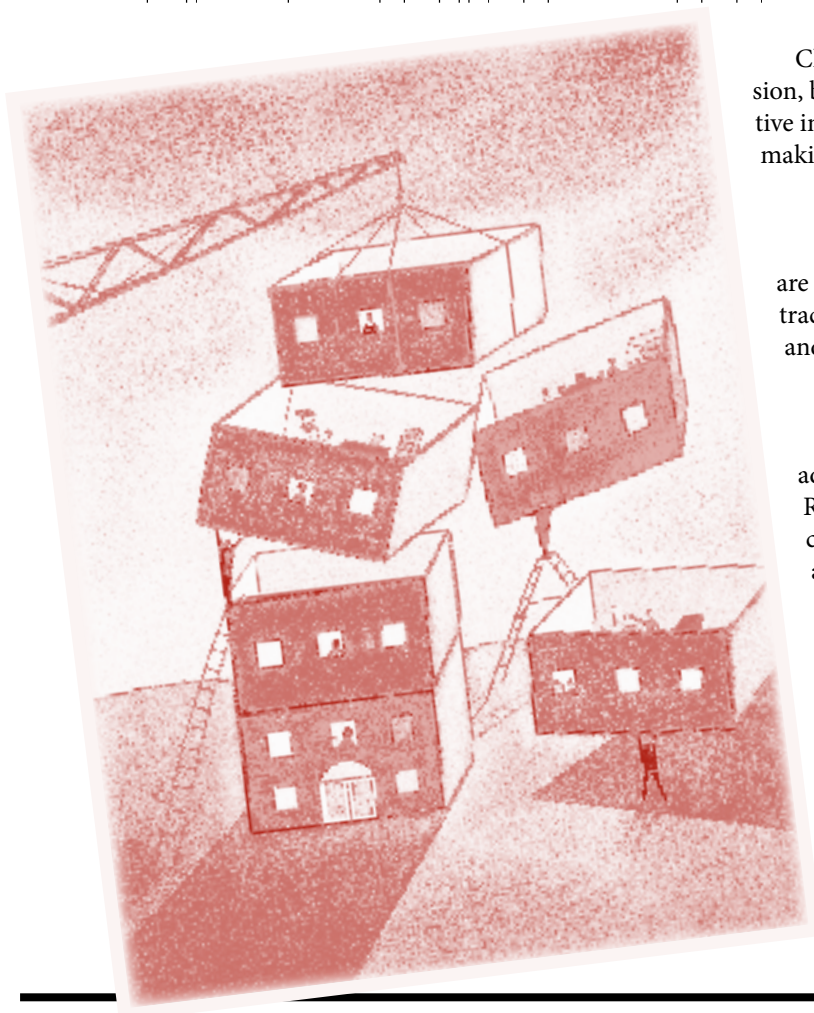


Choosing a Contractor



Choosing a building contractor can be a difficult, confusing decision, but making a good and informed choice will have a lasting, positive impact. Here are some suggestions and resources to assist you in making this important decision:

1. Word of Mouth/Personal Recommendation

Those who have recently been involved in a construction project are an excellent source of information. They can tell you if the contractors they used were responsive, efficient, cost-effective, timely and detail-oriented.

2. Arizona Registrar of Contractors Database

The Arizona Registrar of Contractors (ROC) is a state administrative body that regulates and licenses contractors. The ROC has established minimum workmanship standards to which contractors must adhere. The ROC website, www.azroc.gov, has a link that allows consumers to check certain information about a contractor such as, whether they are licensed; what kind of license they hold; how long they have held their license; whether complaints have been filed against them; and, the amount of their ROC bond. It must be noted, however, that one or two complaints against a contractor should not dictate whether or not to use them; it should just be a piece of information to be aware of in making your choice.

If there is a complaint, the ROC has a complaint process that consumers and contractors can use to attempt to resolve construction disputes up to two years after construction

SEE CONTRACTOR ON PAGE 2

Southwest Super Lawyers Magazine

Seven Gust Rosenfeld attorneys are named by *Southwest Super Lawyers* magazine as some of the top attorneys in Arizona for 2007. Only five percent of the lawyers in the state are named by *Super Lawyers*.[®] They are:

- Timothy W. Barton (Real Estate)
- John L. Hay (Business/Corporate)
- Fred H. Rosenfeld (Bonds/Government Finance)
- Scott W. Ruby (Bonds/Government Finance)
- Richard A. Segal (Business Litigation)
- Richard H. Whitney (Estate Planning & Probate)
- Charles W. "Chas" Wirken (Appellate)

GUST
ROSENFELD

NEW FACES

Barbara U. Rodriguez-Pashkowski

Barbara practices environmental law, including due diligence, air quality and underground storage tank (UST) matters. Her experience includes air quality permitting issues, asbestos, environmental rule writing and legislation, state Superfund and litigation. Prior to joining Gust Rosenfeld, Barbara worked in the Environmental Enforcement Section of the Arizona



BARBARA U.
RODRIGUEZ-
PASHKOWSKI

Attorney General's office as Chief Counsel for the Air, Game and Fish, Underground Storage Tanks and Agriculture (AGUA) Unit. She graduated summa cum laude in 1978 from St. Mary's University and earned her J.D. in 1981 from the University of Houston Law Center. **Phone: 602.257.7494 E-mail: bpashkowski@gustlaw.com.**

Timothy J. Watson

Tim practices business litigation,

as well as insurance, personal injury and professional liability litigation. He has dealt with contract disputes, business torts, negligence, intentional torts, employment and consumer fraud. In addition, Tim has handled appeals at the federal and state level. He serves as a panel arbitrator for the State Bar of Arizona Fee Arbitration Committee. In 1994, Tim earned his B.A. in Criminal Justice from the University of Wisconsin-Whitewater and in 1997 his J.D. from Regent University School of Law. **Phone: 602.257.7482 E-mail: twatson@gustlaw.com**



TIMOTHY J.
WATSON

Kelly J. Shira

Kelly practices education law, employment law, environmental law, general insurance defense and complex litigation. She has worked with more than 30 public school districts, including those on the Navajo and Hopi reservations, on issues such as employment matters, teacher and student rights, special education, procurement, open meeting law,



KELLY J. SHIRA

administrative hearing and contracts. She has appeared before the EEOC, Office of Navajo Labor Relations, Navajo Nation Labor Commission and other administrative bodies and in state and federal courts. Kelly graduated magna cum laude in 2000 from Northern Arizona University and earned her J.D. in 2003 from Arizona State University College of Law. **Phone: 602.257.7670 E-mail: kshira@gustlaw.com**

David A. Pennartz

David practices municipal law, land-use and zoning law, litigation and appeals. He provides counsel to municipalities, corporations and individuals on a variety of issues including commercial, land-use, condemnation, development agreements, civil rights, constitutional law and liability. He is a frequent lecturer on land-use and other legal topics. David is a former city attorney for the City of Scottsdale and former deputy city attorney for the City of Glendale. He is also a former Adjunct Professor at the Maricopa County Community College District. **Phone: 602.257.7418 E-mail: dpennartz@gustlaw.com**



DAVID A.
PENNARTZ

CONTRACTOR

FROM PAGE 1

is complete. A ROC inspector will review the disputed work to determine if minimum workmanship standards have been met. If minimum standards were not met, the inspector will issue a corrective work order for the contractor to fulfill. The ROC's Residential Recovery Fund allows, under certain circumstances, a homeowner to recover up to \$30,000 to repair faulty workmanship.

3. Litigation History of a Contractor

There are several websites that can be used to determine if a contractor has been sued. This is something your attorney can do for you or a savvy Internet user can do on his/her own. The existence of a lawsuit against a contractor should be considered in the context of making your selection.

4. References from the Contractor

It may be helpful to speak, and possibly meet, with recent

clients of the contractor. The ability to review the contractor's work will give valuable insight about the contractor's practices.

5. Consulting an Attorney

In addition to researching the litigation history of a contractor, an attorney can provide valuable assistance by reviewing the proposed contract with the contractor to both explain its provisions and negotiate terms that may reduce potential problems. Also, an attorney who is familiar with the project can advise you throughout the construction phase to help minimize problems as they arise so that construction stays on cost and on schedule.

With research and advance planning, the choice of a contractor can be a rewarding one and potential pitfalls can be avoided.

Wendy N. Weigand 602.257.7410 wweigand@gustlaw.com
Wendy practices litigation, including contract and construction defect law.

Are You Using the Right Deed?

Part II

A deed is an unassuming short piece of paper with a big legal impact. A deed is the actual legal written document that conveys an interest in, or legal title to, property.

In the last segment, we discussed the benefits of using a beneficiary deed when conveying property upon one's death. But what type of deed should be used when purchasing or selling property? The answer is: it depends.

If you are the buyer of the property, the general warranty deed would be ideal because it affords the buyer the greatest protection of any deed. But if you are the seller, you may want to consider a quitclaim deed that conveys only the title or interest the seller owns in the property, with no warranty against the claims of others. This segment focuses on the general warranty deed.

The general warranty deed is used in most sales and transfers of residential property. It is a fairly basic deed that, for the most part, ensures that the seller holds clear title to the property and has the right to sell the property. The deed also guarantees that the title to the property is good, marketable, and insurable, and that there are no liens on the property.

Notably, the general warranty deed preserves the seller's title insurance, which is beneficial to both the seller and the buyer. Almost all title insurance policies continue during the period that the insured seller is liable to the buyer under the general warranty. If the title is threatened or nonexistent by reason of a forgery or other defect in the chain of title, or if there is an encumbrance or lien against the property, the buyer can make a claim against the seller, who can tender the claim to its title insurer.

It is important to remember that the form and type of deed used to transfer property is critical because it can have a significant legal impact on the buyer and seller of the property. If you are considering using a general warranty deed, or any other type of deed, in a current transaction, you should consult your attorney or a real estate professional to determine which deed is right for you.

Melanie G. McBride 602.257.7675 mmcbride@gustlaw.com
Melanie practices civil and commercial litigation, including real estate and contracts.

Title Insurance: What It is and Why You Need It

"How can there be a problem with the title to my home? I bought title insurance." This is a familiar refrain from those who do not understand what they bought or why. For most residential homebuyers, the fee for title insurance is just another one of those closing costs on another one of the closing documents that were glossed over while the homebuyer was distracted with decisions like what color to paint the bedrooms.

Title defects come in many varieties. For example, you may discover that your neighbor's petunia garden is actually on your property, you may discover your neighbor's septic pipe running under your property where you want to build your dream house, or you may discover you bought the property from an imposter by a forged deed. These are real scenarios where a title insurance company has called us into action to solve the title problem.

But what if the title defect cannot be solved? "Title insurance does not guarantee perfect title; instead, it pays for damages, if

any, caused by any defects to title that the title company should have discovered but did not." An Arizona court continued its explanation, "In this respect, title insurance is comparable to other types of insurance: for example, fire insurance does not guarantee that a homeowner will not have a fire, only that if a fire occurs, he can recover for damages, if any, that the fire caused."

Recovery of damages is better than nothing, but may not be enough. For example, suppose you were one of the smart ones who bought prime vacant acreage several years ago before one of the largest real estate booms in Arizona history. Although prices have leveled and in some cases dropped, your property may still be worth significantly more than what it was several years ago, especially after you built your dream home on the site. When you purchased the vacant land you received a title insurance policy applicable for vacant land with a policy limit most likely equal to the amount of your original purchase. If a

title defect is later discovered so severe that you completely lose the property and your home, the title insurance company will, if it is a covered event under the fine print of the policy, pay you the amount of your loss *up to the policy limit*. This is not a hypothetical; real people have been hurt when a complete title loss occurs because they did not buy the right title insurance policy or enough coverage to match the improvements to and dramatic rising value of their property.

The bottom line? I recommend that you review your title insurance policy and make sure you are adequately protected with the right policy and right amount of insurance. Although the longer you have held title to the property the less likely a title defect will arise, it is better to be insured than sorry.

Scott A. Malm 602.257.7481
samalm@gustlaw.com
Scott practices litigation with a focus on real estate and title insurance.



Trust for Your Pet?

The late Leona Helmsley reportedly set up a \$12 million trust for her dog, Trouble. While this may be excessive, you too can establish a trust for your pet.

Richard H. Whitney
602.257.7424
rwhitney@gustlaw.com
Dick practices trusts and estates law.

We're Growing Again!

Gust Rosenfeld is expanding our Tucson office to accommodate our growing business.

New Federal Immigration Rules and State Law

Gust Rosenfeld has deliberately chosen not to include information about the new Federal Immigration rules and the new state law regarding the hiring of illegal workers because new information about the rules and law is constantly being released. The full client alert is available at www.gustlaw.com in the "News and Events" section.

PERSONAL NOTES

Peter Collins, Jr. chaired and presented at the Trial Practice Section of the 2007 State Bar of Arizona Convention and presented at the State Bar of Arizona CLE by the Sea Seminar.

Steve Guttell is co-chair of the American Bar Association 2008 Employment Litigation Skills Training Program.

Rob Haws presented "Ensuring that Your Disciplinary Actions are Lawful: Avoiding the Most Common Discipline Debacles" to the Make-a-Wish Foundation. He also presented "The Top Ten Mistakes Districts Make and How Your District Can Avoid Them." Furthermore, Rob and **Jennifer MacLennan** presented "Legal Tools and Responsibilities Regarding Keeping Schools Safe" at the annual Arizona School Board Association.

Marty Jones presented "Stay on Top of Environmental Considerations" at the National Business Institute seminar *Land Use Law: Current Issues in Subdivision, Annexation and Zoning*. Marty also presented "Environmental Due Diligence for Cities and Counties Before Acquiring Real Property" at a seminar for public lawyers.

James Kaucher was given a Certificate of Recognition for his participation in the Tucson Neighbors Building community project. The project was sponsored by the Tucson Meth-Free Alliance, City of Tucson and Pima County.

Brandon Kavanagh was elected Chair-elect of the State Bar of Arizona Business Law Section for 2007-2008.

Jennifer Larson was elected to the Board of Directors of the Phoenix Conservatory of Music.

Andrew McGuire presented a seminar on the topic of development impact fees at the annual League of Arizona Cities and Towns convention.

Chris McNichol and **Kent Cammack** presented "Everything You Always Wanted To Know About Trustee Sales But Were Afraid to Ask" at the annual Arizona Trustee Association convention. **Chris** also presented a seminar on title insurance at the Phoenix School of Law. Chris is the Arizona contributor for the ABA publication *Foreclosure Law and Related Remedies*. Moreover, the Governor appointed him to the Conservation Acquisition Board (the board advises on various state land issues).

Christina Noyes co-presented "The Proposed New Business Opportunity Rule and State Business Opportunity Laws" at the 2007 ABA Forum on Franchising.

Barbara Pashkowski's article, "As the Sun Sets: Buyer Be Aware, Seller Beware," was published by the *Arizona Journal of Real Estate & Business*. She was also selected as the Chairperson of Gust Rosenfeld's Diversity Committee.

Steven Rendell was recently admitted to the Missouri Bar.

Margaret A. Robertson is an Advisory Board Member for Catholic Charities Community Services.

Scott Ruby presented a seminar on community facility district financing to the treasurers and finance officers of the counties and cities of Hawaii.

Madeleine Wanslee is Chair of the State Bar of Arizona Bankruptcy Law Section for 2007-2008. She co-chaired the Bankruptcy Law Section Seminar at the 2007 State Bar of Arizona Annual Convention.

Chas Wirken chaired and participated in the seminar "Civil Litigation Rules and Case Law Update" at the 2007 State Bar of Arizona Annual Convention. He also co-presented "Ethics, Civility, Professionalism & Beginning Professional Catprints" at the 2007 University of Arizona James E. Rogers College of Law Orientation.

Gust Rosenfeld Helps Reignite the Arizona College of Trial Advocacy

In 2004, Charles “Chas” Wirken became president of the Arizona State Bar Association; one of his goals was to reinstitute the Arizona College of Trial Advocacy. He solicited the help of fellow Gust Rosenfeld member Peter Collins who, with a substantial list of extremely talented Arizona lawyers, reignited the Arizona College of Trial Advocacy in July 2005.

With a new format, schedule, and compressed syllabus, the College recently completed its third successful session of high-quality training for Arizona’s less experienced trial lawyers.

Under the banner of the Arizona State Bar Association Trial Practice Section, the students perform each element of a hypothetical trial. Faculty members critique each student’s performance, and each student reviews her/his own videotape in a private session with a single faculty member.

The culmination of the College is a mock jury trial held in the Arizona Superior Court in Phoenix with actual judges, witnesses and jurors who render verdicts.

This year, 31 students enrolled in the College and more than 55 faculty members participated. The faculty included four former Presidents of the State Bar Association, one Supreme Court Justice, two Court of Appeals Judges and four Superior Court Judges.

The College is financially self-sufficient and has received rave reviews from all participants. The participation of the many Gust Rosenfeld employees who volunteered their time helps the College provide an outstanding educational experience.

Peter Collins, Jr. 520.628.7073

pcollins@gustlaw.com

Peter is the Member-in-Charge of our Tucson office and practices litigation.

Are Foreclosure “Deficiencies” Coming Back?

The law calls it a “deficiency.” In more common terms, it is said that the property is “under water.” Whatever the label, it is the difference between the fair market value of the property (or, to be technical, the foreclosure sale price if it is higher) and the unpaid loan balance of the mortgage debt.

Foreclosures are fewer when property values are on the increase and when lenders employ more conservative loan-to-value financing ratios. In this environment, foreclosures that do occur rarely create a deficiency because the property value exceeds the secured debt.

The current falling market underscores the need to understand the Arizona laws governing deficiencies. In general, under Arizona law a borrower is personally liable to the lender for the full balance of the loan. Certain key provisions, however, commonly referred to as the anti-deficiency statutes, protect borrowers from liability after a foreclosure in certain cases.

In general, a borrower will **not** be subject to personal liability for a deficiency following a foreclosure by way of a non-judicial trustee’s sale **if** the property is (i) 2-1/2 acres or less, and (ii) limited to and utilized for either a single one-family or single two-family dwelling.

This means owners of the typical residential property (most homes would fall within that scope) are protected from personal liability for any shortfall in the loan because foreclosure by trustee’s sale is the predominant method used by lenders in Arizona.

The way the lender forecloses is key. A deed of trust can be foreclosed by trustee’s sale or by judicial action; the less commonly used (in Arizona) mortgage security instrument can only be foreclosed judicially.

Under certain circumstances, the lender can affect whether or not the borrower may be liable for a deficiency by selecting judicial foreclosure instead of a trustee’s sale. For example, on a property otherwise qualifying for insulation from liability in terms of being the specified small dwelling, if the loan was not used to purchase the property (e.g., a home equity loan or a swimming pool construction loan), the borrower could be exposed to a deficiency.

One may well ask about refinanced loans. The scant relevant Arizona case law suggests that the anti-deficiency protections would extend to a loan that refinanced an earlier purchase money loan. The policy and practical implications of a contrary standard would obviously be significant.

It is important to remember and evaluate the other negative consequences of foreclosure, such as credit reporting and the tax ramifications such as forgiveness of indebtedness.

The laws and procedures regarding the enforcement of secured loans can be complicated. The present market offers extra challenges. Lenders and borrowers alike are well advised to consult with legal counsel to assess their particular loan situations.

Christopher M. McNichol 602.257.7496 mcnichol@gustlaw.com

Chris practices in the area of real estate transactions and litigation.

The Best Lawyers in America® 2008

Nine lawyers from Gust Rosenfeld P.L.C. were recently selected by their peers for inclusion in *The Best Lawyers in America*® 2008 (Copyright 2007 by Woodward/White, Inc., of Aiken, S.C.).

- **Timothy W. Barton** (Real Estate Law)
- **Tom Chauncey II** (Corporate Law)
- **Robert D. Haws** (Labor and Employment Law)
- **John L. Hay** (Franchise Law)
- **Fred H. Rosenfeld** (Corporate Law and Public Finance Law)
- **Scott W. Ruby** (Corporate Law and Public Finance Law)
- **Richard A. Segal** (Commercial Litigation and Antitrust Law)
- **Richard H. Whitney** (Trust and Estates)
- **Charles W. "Chas" Wirken** (Appellate Law and Franchise Law)



Watch Your Yardman

After March 31, 2008, no one in Maricopa County may use a leaf blower to blow landscape debris onto public roadways or operate a leaf blower except on surfaces that have been stabilized. "Stabilized" means most surfaces except raw dirt. This means blowers may not be used on dirt. Every three years a paid leaf blower operator must receive training designed to minimize the generation of

dust emissions. Sellers and renters of leaf blowers must give users printed material on how to comply with Arizona State Senate Bill 1552. This bill is a somewhat comprehensive approach to reducing Arizona's air quality problems.

Richard H. Whitney 602.257.7424
rwhitney@gustlaw.com
Dick practices trusts and estates law.

PHOENIX OFFICE

201 E. Washington St., Ste. 800
Phoenix, Arizona 85004-2327
Telephone: 602.257.7422
Facsimile: 602.254.4878

TUCSON OFFICE

One S. Church Ave., Ste. 1900
Tucson, Arizona 85701-1627
Telephone: 520.628.7070
Facsimile: 520.624.3849

This newsletter is published twice a year by the law firm of Gust Rosenfeld P.L.C. as a service to our clients and friends. It is intended to provide general information only, not advice on specific legal questions. Portions may be reproduced with attribution. For change of address, additional copies, or a complimentary subscription, contact our receptionist. We invite your comments.
FALL 2007, ISSUE NO. 52 © 2007 Gust Rosenfeld P.L.C. www.gustlaw.com

GUST
ROSENFELD

ATTORNEYS SINCE 1921 P.L.C.

201 E. WASHINGTON ST., SUITE 800
PHOENIX, ARIZONA 85004-2327

RETURN SERVICE REQUESTED

PRSR STD
U.S. POSTAGE
PAID
Phoenix, AZ
Permit No. 2659