

County Recorders Implement Arizona Law to Prevent Title Fraud

A new Arizona law requires all Arizona county recorders to offer an alert system to notify the person or entity that owns real property when a recording occurs relating to the property. The law is intended to detect an illegal and costly attempt to forge title documents and strip the owner of equity in the property.

The new law gives Arizona county recorders until January 1, 2025, to provide a system for notifying a person or entity when any document is recorded in which the person or entity is a named party to the instrument. The system is voluntary for the person or entity, and the notice to the property owner must be provided by the county recorder “promptly by email, text message or other similar means.” The alerts arrive by email or text. Participation in the alert system is voluntary for property owners, who must take the initiative to request the alerts.

This type of title fraud occurs, for example, when a fraudster forges a change in title to real property without the owner’s knowledge and then borrows against the property or sells the property, taking off with the equity. It most often targets property that is empty or owned by persons or entities located out of state. People who own second homes, vacation homes, and real estate investment properties may devote less attention to their titles and unknowingly become targets of title fraud.

Title fraud also can occur in the case of property previously owned by someone who has passed away. Once the fraudulent transfer occurs, unwinding the transaction and proving fraud can be costly in terms of both time and money.

The alert systems vary by county, with some counties monitoring the specific property owner information and others monitoring a particular parcel number. Five of Arizona’s fifteen counties have already implemented an alert system. Here are the links for property owners in those five counties to use:

- Maricopa County’s Title Alert: <https://recorder.maricopa.gov/MaricopaTitleAlert/>
- Mohave County’s Assessors Address Protection Program (AAPP): <https://www.mohave.gov/ContentPage.aspx?id=111&cid=1657&page=1>
- Pima County’s Fraud Guard: <https://www.recorder.pima.gov/FraudGuardInfo>
- Pinal County’s Recording Notification Service: <https://acclaim.pinalcountyaz.gov/PublicRecordsNotificationWeb>
- Yavapai County’s Eagle Fraud Alert: <https://www.yavapaiaz.gov/Mapping-and-Properties/Recorders-Office>

SEE **TITLE FRAUD** INSIDE PAGE

EEOC Proposed Rule Outlines Expansive Scope of Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act (PWFA), which went into effect on June 27, 2023, requires employers with at least 15 employees to provide “reasonable accommodations” to a worker’s known limitations “related to, affected by, or arising out of” pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.” The Equal Employment Opportunity Commission (EEOC), which is charged with enforcing the PWFA, recently proposed a rule (regulation) that includes the agency’s interpretations of the scope of the new law. This proposed rule demonstrates the EEOC’s interpretation of the wide array of employee conditions that fall within the protections of the PWFA. It can be found in the Federal Register at

<https://www.federalregister.gov/documents/2023/08/11/2023-17041/regulations-to-implement-the-pregnant-workers-fairness-act>

In addition to pregnancy and childbirth, the PWFA provides protection for pre- and postpartum conditions. “Pregnancy” is defined broadly to include past pregnancies and potential or intended pregnancy. The proposed rule also sets forth a number of examples of “related medical conditions” that include those conditions related to termination of pregnancy, infertility and fertility treatment, anxiety, depression, psychosis, postpartum depression, and menstrual cycles, as well as conditions related to lactation. For example, a “pregnant worker seeking time off in order to get an amniocentesis is attending a medical

SEE **PWFA** LAST PAGE

Awards and Celebrations

Gust Rosenfeld P.L.C. has been named in the 2024 Best Law Firms® rankings and has been recognized consecutively every year since the inception of the Best Law Firms® awards in 2010.

Longtime Gust Rosenfeld attorney **Fred Rosenfeld** reached his 86th birthday in October. Also, Fred was featured in the November issue as one of Phoenix Magazine's "Great 48."

Charles "Chas" Wirken has been appointed by the Chief Justice of the Arizona Supreme Court to a new task force charged with amending and restyling Arizona's Rules of Procedure for Special Actions, which are extraordinary remedy proceedings that may be an interlocutory appeal or take the place of various traditional writs.

Maddalena Savary served as moderator for a Meet the Judges of Division Two panel in Tucson and a 2023 Judicial Panel in Phoenix. She also served as a panelist at the American Juris Link State Judicial Clerkship Academy on the topic of What I Wish I Knew Before My Clerkship.

Gehl Tucker presented "Teacher Housing: Obstacles, Pathways and Possibilities" at the Arizona School Boards Association Law Conference in September. At the same conference, **Ben Hufford** was on the "Stump the Lawyer Panel."

In July, **Chris McNichol** and **Kent Cammack** spoke at the Arizona Trustee Association annual convention. They presented on the statutes governing a trustee's duties when conducting a trustee's sale (non-judicial foreclosure). This past summer, Chris and Kent also presented at the Real Estate Track of the State Bar of Arizona's CLE by the Sea.

In November, **Christina Noyes** spoke about Advanced Issues in Mergers and Acquisitions of Franchise Companies at the American Bar Association's Forum on Franchising in Dallas, TX.

At the annual conference of the Arizona League of Cities and Towns in August, **Andrew McGuire** presented "Development Agreements: Incentivizing Developments While Protecting Municipalities." This past April, Andrew presented

to the Arizona City Attorneys Association on two subjects, "Practical Approaches to Regulating Short Term Rentals" and "Development Fee and Utility Fee Updates."

In September, **Nathan Schott** and **Claire DeChambre** presented at the Arizona School Boards Association Law Conference in Scottsdale on the topic of Board Member Speech and Social Media.

Susan Segal presented at the Arizona School Boards Association Law Conference on Recent Trends in Enforcement by the U.S. Department of Education Office for Civil Rights. At the same conference, Susan also spoke about Student Discipline for Weapons Violations.

Chris Thomas provided an Arizona Legislative and Legal Update to the Arizona School Administrators Law Conference in September. At the Arizona Association of School Business Officials School Finance Primer in October, Chris presented "The Legal Landscape of Public Education." Chris also presented at the Arizona School Personnel Administrators Fall Conference with "Exploring Hot Topics with Your Legal Compass."

In July, **Carrie O'Brien** and **Chris Thomas** presented "The FY2023 Legal Backpack" for the annual conference of the Arizona Association of School Business Officials.

Scott Malm spoke at the annual convention of the Land Title Association of Arizona on issues related to title insurance claims and real estate.

At the Arizona School Board Association Law Conference, **Carrie O'Brien** and **Joseph Williams** were panelists on "A Title IX Roundtable: A Discussion of the Common Issues Faced by School Districts Regarding Title IX Enforcement in Arizona." Carrie also presented on textbook adoption.

George Gould will be teaching LAW 210: Intro to American Legal System at ASU's Tempe Campus during the Spring 2024 semester.

TITLE FRAUD FROM FRONT PAGE

Because the alert arrives after the title fraud has already been committed, there are proactive steps property owners should take to protect themselves. For example, property owners should monitor their annual property tax statement and other documents available on the assessor's website to confirm accuracy. Property owners should also check their credit report for any oddities suggesting they may be a target of identity theft.

Once the fraud is uncovered, the property owner should notify state and local law enforcement authorities.

Some title insurance policies cover title fraud so that the title

company will hire a lawyer at its cost to help a property owner recover title to property. Property owners can check with their title company to see which coverages they may have and how the title company may be able to assist property owners if title fraud occurs.

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Scott concentrates his practice on litigation and dispute resolution for businesses and individuals.*

*Maddalena Savary | 602.257.7974 | msavary@gustlaw.com
Maddalena practices litigation with a focus on appellate and commercial practice.*

Clean Energy Project Tax Credits Available to Government Entities in Inflation Reduction Act

The Inflation Reduction Act of 2022, Public Law 117-169 (IRA), whose primary objective was reducing inflation, is also the most significant clean energy legislation in U.S. history, introducing and enhancing existing clean energy incentives.

Among these incentives are tax credits available for certain qualifying green energy projects. Tax-exempt entities, states, and political subdivisions (collectively, “Applicable Entities”) can now benefit from these tax credits. Before the IRA, for a green energy project to benefit from a tax credit, it required ownership by a tax-paying entity (for example, a school district entering into a Power Purchase Agreement for a solar project). This ownership arrangement was essential because unlike a tax-paying entity, tax-exempt and governmental entities do not have federal income tax liability to offset against the tax credit amount.

Now, under the IRA, Applicable Entities can own green energy projects and benefit directly from a tax credit by electing to receive a direct payment from the federal government in an amount equal to the tax credit, effectively “monetizing” the tax credit. The election must be made on an original annual tax return (not an

amended return) and must be filed no later than the due date of the return. For tax-exempt entities, this would be Form 990-T, which, to claim tax credits, must be filed even if such entities are not otherwise required to file annual tax returns. Additionally, a completed Form 3800 must be filed with the annual tax return. Prior to an entity completing these forms and making the election, it must obtain a registration number through a pre-filing registration process via a forthcoming electronic portal (the IRS will release more details regarding the portal in late 2023). Further, the exact tax credit amount can vary based on the financing methods used for the green energy project, with grants, forgivable loans, and tax-exempt bonds as examples of financings that can affect the tax credit amount.

If you have any questions regarding the Inflation Reduction Act, tax credits or other green energy incentives, please contact a Gust Rosenfeld attorney.

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Brandon focuses his practice on providing tax guidance and technical structuring advice for transactions in the public finance area.

Gust Rosenfeld Attorneys Named PHOENIX Magazine 2023 Top Lawyers

Gust Rosenfeld P.L.C. is pleased to announce that nine of its attorneys have been voted a 2023 *PHOENIX* Magazine Top Lawyer. These professionals were singled out by their peers in a vote conducted by the magazine of the local membership of the State Bar of Arizona. This is the second year the magazine has conducted this vote.

Gust Rosenfeld Lawyers voted 2023 *PHOENIX* Magazine Top Lawyers:

Charles Wirken - Appellate Law

James Marburger - Aviation Law

Séan O’Brien - Bankruptcy and Reorganization

Robert Williams - Bankruptcy and Reorganization

Craig Keller - Civil Law Litigation, Commercial Litigation

Susan Segal - Education Law

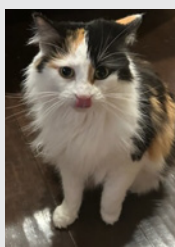
Andrew McGuire - Government and Administrative Law

Frederick Cummings - Medical Malpractice Defense

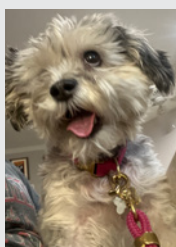
Michael Bate - Tax Law

Can You Match the GR Attorney to Their Pet?

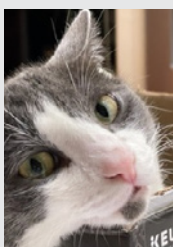
Want to learn which attorneys are matched with which pets? Turn to the last page for answers.
George Gould, Shannon Scola, Claire DeChambre, Victoria Buchinger, James Kaucher, Laura Sever Blanco.



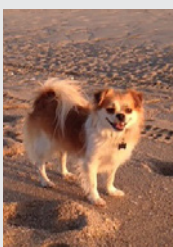
Charlotte



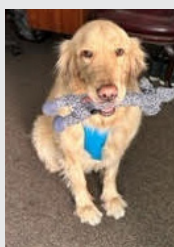
Luna



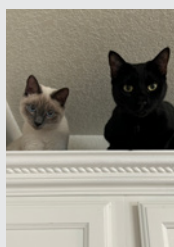
Kateri



Francis Bean

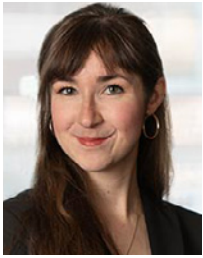


Eli



Zoey & Lincoln

NEW FACES



Mary Colleen Fowler

Mary Colleen focuses her practice in the areas of education and employment law. A Kansas native, Mary Colleen graduated from the University of Kansas School of Law where she was named to the Order of the Coif. She also earned a Media, Law, and Technology Certificate.

Mary Colleen worked as a Staff Editor for the *Harvard Journal of Law and Public Policy* and a Comment Editor for the *Kansas Law Review*. Additionally, she competed in Moot Court and advanced to the Elite Eight Round of Burton D. Wechsler National First Amendment Moot Court Competition in Washington, D.C. Her undergraduate degree is from the University of San Diego, where she graduated *summa cum laude*.



E. Francis Brillantes Espiritu, Jr.

Francis brings expertise in litigation to Gust Rosenfeld where he focuses on medical malpractice defense. Prior to joining Gust Rosenfeld, Francis practiced family law in Arizona, managing cases from start-up to the appellate level.

Francis was admitted to the Arizona Bar in October 2019 and is a graduate of the Sandra Day O'Connor College of Law at Arizona State University. He is a member of the Sandra Day O'Connor Inn of Court and the Arizona Asian American Bar Association. His undergraduate degree is from the University of California, Davis.



Neil A. Berglund

Neil joined the firm's Health Care Law practice area with a focus on medical malpractice. He holds a patent license with the United States Patent and Trademark Office and consults on intellectual property issues. Neil, whose undergraduate degree is in Ecology and Evolutionary Biology, also

has an interest in environmental law.

Before joining Gust Rosenfeld, Neil served as a law clerk at the United States District Court of Arizona for the Honorable Rosemary Marquez and at the Pima County Superior Court for the Honorable Gary Cohen. Neil graduated *cum laude* from the University of Arizona James E. Rogers College of Law where he was an Articles Editor for *Arizona Law Review* and a Torts Research Assistant and Ares Fellow. His undergraduate degree is from Tulane University where he graduated *cum laude*.



Diana L. Kanon

Diana focuses her practice on medical malpractice and civil litigation. Most recently, Diana served as Deputy County Attorney for the Gila County Attorney's office in Globe, Arizona where she prosecuted felony criminal matters. Previously, Diana had been an associate attorney with a private law firm in Tucson. There she defended civil matters in state and federal court, including professional malpractice, municipal liability, insurance defense, estate litigation, bankruptcy, and employment.

Diana was born in Australia and grew up in Globe where her father was in the mining industry and her mother was a teacher. She is a graduate of the University of Arizona James E. Rogers College of Law *cum laude* (2002). In law school, she was Articles Editor of the *Arizona Law Review*, on the Dean's List, and a Richard Grand Legal Writing Competition Finalist.

Diana attended Bryn Mawr College as an undergraduate and received her law degree from the University of Arizona (1998). Past affiliations include the State Bar CLE Committee, Tucson Division (2005-2009); Southern Arizona Chapter of the Arizona Women Lawyers' Association Steering Committee; the Prosecuting Attorneys' Advisory Council; and top leadership positions for the Pima County Bar Association Young Lawyers Division.

Diana is admitted to the Arizona Bar (2002), the U.S. District Court for the District of Arizona (2002), and the U.S. Court of Appeals for the 9th Circuit (2007). Her prior case work includes six published appellate opinions.

ET·Y·MOL·O·GY COR·NER CHESS LESSONS

The U.S. Chess Championship is an annual event, taking place in the Fall. It will end with a final checkmate, where one party's king is in check and cannot safely move (13c Old French; perhaps derived from the Arabic *shah mat* meaning "the king died"). The final game cannot end in a stalemate where one party has no legal move (mid-15c Middle English, from the Old French *estaler* for "standstill"). The result of a stalemate is a draw and the match goes on. Chess is played on a board, but we watch a similar game played in other arenas. In life, as in chess, there is no winner in a stalemate.

Richard B. Hood | 602.257.7470 | rbhood@gustlaw.com
Rick, our etymologist, practices in the areas of commercial law and litigation.

The Best Lawyers in America[®] 2024 Names Three Gust Rosenfeld Attorneys “Lawyer of the Year,” Nine Named “Ones to Watch,” 30 “Best Lawyers”

Charles Wirken was named the Best Lawyers[®] 2024 Franchise Law “Lawyer of the Year” in Phoenix; **Fred Cummings** was named the Best Lawyers[®] 2024 Professional Malpractice Law – Defendants “Lawyer of the Year” in Phoenix; and **Gerry O’Meara** was named Best Lawyers[®] 2024 Litigation – Banking and Finance “Lawyer of the Year” in Tucson.

Lawyers of the Year



Charles W. Wirken
Franchise Law
(Phoenix)



Frederick Cummings
Professional
Malpractice Law –
Defendants (Phoenix)



Gerard R. O’Meara
Litigation – Banking
and Finance (Tucson)

Ones to Watch

Nine Gust Rosenfeld attorneys were named “Ones to Watch.” *This award honors attorneys who have been in practice fewer than 10 years.*

- **Kyle B. Bate*** - Business Organizations (including LLCs and Partnerships); Tax Law; Trusts and Estates
- **Brandon Caywood** – Public Finance Law; Tax Law
- **A. Daniel Coumides** – Commercial Litigation; Insurance Law; Personal Injury Litigation – Defendants
- **Francis Espiritu** – Family Law; Family Law Arbitration and Mediation
- **Heidi Purtzer** - Commercial Litigation; Corporate Law; Insurance Law
- **Brittany J. Reed** – Litigation – Labor and Employment
- **Melissa S. San Angelo** – Commercial Litigation; Elder Law; Health Care Law; Litigation – Labor and Employment; Medical Malpractice Law - Defendants; Personal Injury Litigation - Defendants
- **Shannon Scola** – Commercial Litigation; Corporate Law; Insurance Law
- **Robert Williams** – Bankruptcy and Creditor Debtor Rights/ Insolvency and Reorganization Law; Commercial Litigation; Litigation – Bankruptcy

Best Lawyers

Thirty Gust Rosenfeld attorneys were selected to be included in The Best Lawyers in America 2024. All nominees in every category are recommended by and voted on by their peers.

- **Michael H. Bate** – Tax Law
- **Laura Sever Blanco** – Real Estate Law
- **Kent E. Cammack** – Litigation – Real Estate; Real Estate Law
- **Tom Chauncey** – Corporate Law; Media Law
- **Mark L. Collins** – Litigation – Real Estate; Real Estate Law
- **Peter Collins, Jr.** – Commercial Litigation; Insurance Law; Personal Injury Litigation – Defendants; Personal Injury Litigation – Plaintiffs; Professional Malpractice – Defendants
- **Frederick M. Cummings** – Medical Malpractice – Defendants; Personal Injury – Defendants; Product Liability Litigation – Defendants; Professional Malpractice Law – Defendants
- **Patrick J. Farrell** – Corporate Law
- **Thomas E. Halter** – Litigation – Real Estate; Real Estate Law
- **Robert D. Haws** – Education Law; Employment Law – Management; Litigation – Labor and Employment
- **Thomas F. Hickey*** – Real Estate Law
- **Richard B. Hood** – Commercial Litigation
- **James W. Kaucher** – Litigation – Health Care; Professional Malpractice Law – Defendants
- **Craig L. Keller** – Litigation – Trusts and Estates; Real Estate Law
- **Jennifer N. MacLennan** – Education Law
- **Scott A. Malm** – Real Estate Law
- **Andrew J. McGuire** – Land Use and Zoning Law; Municipal Law; Real Estate Law
- **Jeffrey L. McLerran** – Litigation – Health Care; Medical Malpractice Law – Defendants
- **Christopher M. McNichol** – Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law; Real Estate Law
- **Christina M. Noyes** – Corporate Law; Franchise Law
- **Séan P. O’Brien** – Bankruptcy and Creditor Debtor Rights/ Insolvency and Reorganization Law
- **Gerard R. O’Meara** – Litigation – Banking and Finance; Real Estate Law
- **Barbara U. Rodriguez-Pashkowski** – Environmental Law; Natural Resource Law
- **Frederick H. Rosenfeld** – Corporate Law; Municipal Law; Public Finance Law
- **Shiela B. Schmidt** – Municipal Law
- **Susan Segal** – Education Law; Employment Law – Management; Municipal Law
- **John T. Shoaf** – Litigation – Insurance
- **Frank S. Tomkins** – Real Estate Law
- **Charles W. Wirken** – Appellate Practice; Franchise Law
- **Michael S. Woodlock** – Construction Law; Litigation – Construction; Real Estate Law

In total, 39 Gust Rosenfeld lawyers were singled out for excellence.

** First year the lawyer was listed in the published practice area.*

Gust Rosenfeld in the Community

In keeping with Gust Rosenfeld's commitment to the community, our 2023 Community Service Event will benefit three shelters by collecting new and gently used winter coats, hats, gloves and blankets. The recipients of these donations will be **Flagstaff Shelter Services** in Flagstaff, Arizona, **Gospel Rescue Mission** in Tucson, Arizona, and **Central Arizona Shelter Services** in Phoenix, Arizona.

Also, Gust Rosenfeld was a sponsor at the **Ability360.org** breakfast in October.

Ability360 is a 501(c)(3) non-profit organization. Through its comprehensive programs, Ability360 touches the lives of individuals with disabilities and addresses the disability concerns of their family members, co-workers and employers.



Photo credits: Ability360

PWFA FROM FRONT PAGE

appointment related to the pregnancy. An employee who requests leave for IVF treatment for the worker to get pregnant has a related medical condition (difficulty in becoming pregnant or infertility) and is seeking health care related to it. An employee whose pregnancy is causing fatigue has a physical condition (fatigue) related to pregnancy. An employee whose pregnancy is causing back pain has a physical condition (back pain) related to pregnancy.” *Section 1636.2 of the proposed rule.*

The new law and the proposed rule are intended to expand existing protections against pregnancy discrimination under Title VII of the Civil Rights Act and access to reasonable accommodations under the Americans with Disabilities Act (ADA). The reasonable accommodations required for “known limitations” do not have to rise to the level of “disability” under the ADA. Under the proposed rule, the term “limitations” has no required level of severity. The physical or mental condition

can be a “modest, minor, and/or episodic impediment or problem.” *Section 1636.3 of the proposed rule.*

The period for accepting comments on the proposed rule closed on October 10, 2023. The EEOC will now review and consider the comments submitted and adopt the final rule. In the meantime, however, the EEOC has been accepting Charges of Discrimination under the PWFA since the law became effective on June 27, 2023. Going forward, employers that are subject to the PWFA should consider implementing a PWFA policy or enhancing their current accommodation policies to include specific reference to pregnancy-related accommodations.

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Susan focuses her practice on public law and employment law.*

Attorney Pet Match... Laura Sever Blanco: Charlotte; Shannon Scola: Luna; Victoria Buchinger: Kateri; Claire DeChambre: Francis Bean; James Kaucher: Eli; George Gould: Zoey and Lincoln.

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