

## More Important Now Than Ever Estate Planning for Domestic Partners

In the event of your illness, disability or death, Arizona and common law offer you and your partner of the same or opposite sex little or no rights and protections.

For example, if you die without a will or trust, Arizona law generally provides that probate assets go to your spouse or children, who also have priority to be appointed by a court as your personal representative or executor.

Other Arizona laws provide that your spouse (or lacking a spouse, your children) has the right to make all post-death arrangements for you, such as your funeral and burial or other disposition of your body.

Similarly, on your disability, your spouse or children have priority to be appointed the guardian of your person and the conservator of your assets pending your recovery.

Without documentation, your domestic partner is essentially considered a stranger, and family members and third parties are not obligated to accept or follow his or her instructions even though they may be based on your oral and known instructions.

Sometimes, family members and even friends may express anger and resentment toward your domestic partner after your disability

or death and may actively decline to let him or her participate in any way with the management of post-death matters.



**The above scenarios may be avoided by appropriate planning.** Everyone, but particularly domestic partners, needs to have all of the following: will and trust prepared by a competent professional to spell out how you leave your property and who will be in charge of your estate, durable power of attorney to name an individual to handle your financial affairs if you cannot, and health care power of attorney and living wills to appoint a surrogate to give health care instructions if you are unable to do so and to appoint an individual to make all post-death arrangements for the care of your body. Usually, your domestic partner is appointed to handle the above, followed by members of your family or friends.

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## Dodd-Frank: New Mortgage Servicer Rules Impact Initiation of Foreclosure

In July 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Act") became law. This law was intended to address the causes of the recession of 2007-2010. A centerpiece of this legislation is the Consumer Financial Protection Bureau ("CFPB"), a new federal agency created "to protect consumers by carrying out federal consumer financial laws."

**New rules from the CFPB will greatly impact the mortgage lending industry** by imposing requirements on mortgage

loan servicers. "Small servicers" (defined as those servicing 5,000 or fewer mortgage loans and who service only loans that they or an affiliate originated or own) are exempt from certain of these requirements.

**The new rules provide that servicers:**

1. Must provide to the borrower a statement for each billing cycle containing, among other things, information on payments currently due and previously made, fees imposed, transaction activity, application of past payments, contact

information for the servicer, and, where applicable, information regarding delinquencies.

2. With respect to adjustable rate mortgages, must provide to the borrower notices several months in advance of rate adjustments and payment changes.
3. Must promptly credit periodic payments from borrowers as of the day of receipt.

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SEE DODD-FRANK ON PAGE 4

# Supreme Court Accepts Tarrant Water Case; Will Decide Whether Compacts Enforceable

The United States Supreme Court has accepted *Tarrant Regional Water District vs. Herrmann* as one of the cases it will hear in 2013, ending a multi-year journey through the federal courts, which began in 2007 and included defeats in federal court in Oklahoma City and the 10th Circuit Court of Appeals in Denver.

## **At stake is whether federal water compacts are enforceable.**

The Red River Compact, ratified by Congress in 1980, governs the use, control and distribution of the interstate water of the Red River and provides that there be an “equitable apportionment” of the water between the states of Texas, Oklahoma, Arkansas, and Louisiana. Tarrant Regional had sought to divert water from river basins that flow into the Red River for water supply for Texas. Tarrant Regional contends that the Oklahoma Legislature violated the compact by passing a 2009 bill that requires legislative approval of any transfer of Oklahoma water to other states.

In 2010, a federal judge in Oklahoma City upheld the right of

Oklahoma to ban water sales to Texas. The 10th Circuit Court of Appeals in Denver upheld this ruling. The case was appealed to the U.S. Supreme Court, which asked the opinion of the U.S. Solicitor General. The Solicitor General urged the U.S. Supreme Court to take the case in a petition filed in December.

Tarrant Regional believes that what is at stake is not just its own access to the Red River, but also water compacts that are crucial parts of the water supplies of Los Angeles, San Diego, Tucson, Phoenix, Denver, Las Vegas, and Salt Lake City, as well as many other entities. It is important for the U.S. Supreme Court to weigh in on this issue, particularly in light of the recently released Bureau of Reclamation Colorado River Study, which predicts severe water-shortfalls during the next 50 years.

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## Reinstatement of BABs? Risk of Reduced Federal Subsidy

The popular Build America Bond (“BAB”) Program expired on December 31, 2010, but there have been several proposals in Congress to reinstate BABs, albeit at a lower federal subsidy rate. Before their expiration, BABs permitted state and local governments, including school districts, to issue a taxable bond to finance governmental projects. The issuer of this taxable bond received a subsidy from the U.S. Treasury in an amount equal to 35% of the interest payable to bondholders. President Obama has proposed reinstating BABs with a reduced 28% subsidy rate. In addition, there have been various proposals introduced in Congress with BAB subsidy rates ranging from 25%-30%.

**Because issuers of BABs rely on an annual or semi-annual payment from the U.S. Treasury**, there has always been the risk that such payment would be reduced or eliminated due to federal budget issues, such as sequestration. It is possible that sequestration could result in reduced subsidy payments to issuers of existing BABs. Issuers would then need to absorb such shortfall in order to continue making the full interest payment due on their outstanding BABs. The future threat of a reduction in or elimination of the federal subsidy might prevent BABs from being widely used in the future, assuming they are reinstated.

## Possible Cap on Tax-Exempt Interest

President Obama’s recent budget proposal introduced a 28% cap on the value of tax exclusions and deductions.

Depending upon an individual’s tax bracket, such a cap could have a direct impact on the value of tax-exempt interest payments received on existing bonds from various state and local governments.

Any cap on the deductibility of tax-exempt interest would serve to shift the cost of the tax subsidy of such tax-exempt bonds from the federal government to the state and local political subdivisions issuing the bonds in the form of increased borrowing costs.

Investors will demand a higher interest rate if they are unable to receive the full benefit of tax-exempt bonds, thus increasing the borrowing costs of state and local governments.

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“Facing” the future

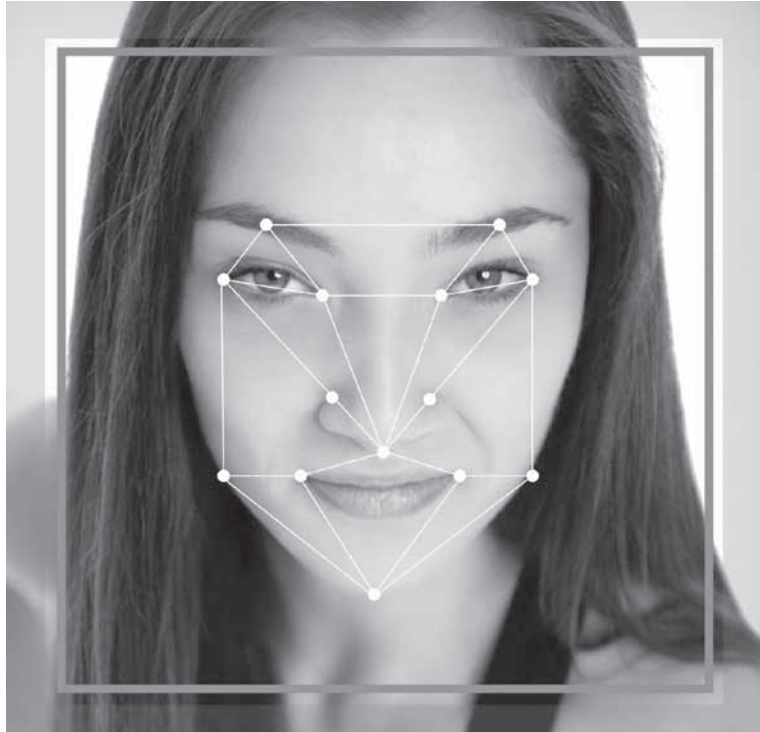
# Potential Abounds for Recognition Technology

**Smile! Retailers, Big Brother, and others are collecting and analyzing your photographs.** You may remember the futuristic film “Minority Report” featuring Tom Cruise. Set in 2054, the movie portrays a Gap store scene in which Cruise is immediately recognized by facial recognition software and provided purchase suggestions based on his prior buying habits. For better or worse, that technology exists today; retailers in Japan, Europe, and the United States are currently using facial recognition technology to profile customers to estimate gender, age, and how frequently the shopper visits the store. This technology is not limited to retailing. Indeed, Facebook’s online facial recognition technology assists users in “tagging” photos of their family and friends.

**How does facial recognition technology work?** A computer application or program uses a video or photo to identify the relative position, size, and/or shape of the eyes, nose, cheekbones, and jaw of the subject. Once measured, these features are then used to search for other images with matching features. Facial recognition technology is a form of biometrics, which is the identification of humans by traits or characteristics unique to each person. Other biometric information includes fingerprints, DNA, iris patterns in the eyes, voices, scent, and even a person’s gait. Biometric identification systems are used to identify certain individuals in airports, train stations, and at public sporting events, among other public places.

**The United States Department of State** operates one of the largest facial recognition systems in the world, estimated to hold more than 75 million photographs that are actively used for visa processing. The FBI has its own state-of-the-art facial recognition program to help reduce terrorist and criminal activities. In addition, individual states are scanning drivers’ photos through cutting-edge facial recognition technology in an effort to cut down on aliases used to abuse welfare benefits and to prevent voter fraud and other criminal activity.

The technology is also used in the private sector to discourage certain behaviors. For example, casinos use the technology to catch card counters and other blacklisted individuals. Facial



recognition systems are also beginning to be incorporated into unlocking mobile devices and related applications. It will be just a matter of time before the technology will be used as a security measure at ATMs in lieu of bank cards or personal identification numbers.

**The potential uses of facial recognition technology seem endless.** While the technology benefits consumers by providing them with convenience and innovative products, there is undoubtedly some sacrifice of privacy.

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## NEW FACES

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Landon W. Loveland

Landon focuses his practice on municipal law, litigation, land-use and zoning law, and appeals. He has successfully represented municipalities and landowners in eminent domain litigation in both state and federal district court and in the 9th Circuit Court of Appeals. Landon has represented utilities before the Arizona Corporation Commission in certificate of convenience and necessity matters, administrative complaints and litigation. He has also defended premises and products liability claims, contractors and subcontractors against construction defect claims, and borrowers and lenders in litigation matters. Landon has negotiated and drafted large commercial loan documents on behalf of lenders; assisted one of the nation’s largest telecommunications providers with an audit, analysis and management of its leased spectrum holdings; and conducted due diligence and analysis of wireless spectrum holdings in connection with a \$14.5 billion joint venture.

4. Are prohibited from charging a borrower for force-placed insurance unless the servicer has a reasonable basis to believe that the borrower has failed to maintain hazard insurance and the servicer has provided the borrower with notice of such failure. A similar rule applies to borrowers with an escrow account.
5. Must comply with certain procedural requirements for responding to information requests or complaints of errors.
6. Must establish policies and procedures aimed at providing and facilitating transfers of information between borrowers and servicers.
7. Must make good faith efforts to establish “live contact” with borrowers no later than the 36th day after a delinquency and inform them of their options. A servicer must also provide borrowers with written information about loss mitigation options no later than the 45th day after a delinquency.
8. Must maintain reasonable policies and procedures to provide delinquent borrowers with access to personnel to assist them with loss mitigation options where applicable.
9. Must follow specified loss mitigation procedures for a mortgage loan secured by the borrower’s principal residence. The most significant of these procedures is **an absolute prohibition against initiation of foreclosure procedures until a mortgage loan account is more than 120 days delinquent.**

Even after the 120 day period, if a borrower submits a complete application for a loss mitigation option before a servicer has made the first filing required for the foreclosure process, a servicer may not begin the foreclosure process unless (i) the servicer informs the borrower that the borrower is not eligible for any loss mitigation option, (ii) a borrower rejects all loss mitigation offers, or (iii) the borrower fails to comply with the terms of a loss mitigation option.

If a borrower submits a complete application for a loss mitigation option after the foreclosure process has commenced, but more than 37 days before a foreclosure sale, the servicer may not conduct a foreclosure sale until one of the same three conditions has been satisfied.

While “small servicers” are exempt from the foregoing requirements, they must still comply with two requirements: (i) foreclosure proceedings may not commence unless a borrower is more than 120 days delinquent, and (ii) foreclosure may not proceed if the borrower is performing under the terms of a loss mitigation agreement.

These new rules become effective January 14, 2014. Loan servicers should begin implementing procedures to comply with the new rules as soon as possible.

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## 2013 GR Super Lawyers

We are pleased to announce that nine of our lawyers have been selected for inclusion on the *2013 Southwest Super Lawyers* list.

**Each year, no more than 5 percent of the lawyers in Arizona receive this honor.**

Those selected, by practice area, are: Appellate: **Charles W. Wirken**. Bankruptcy & Creditor/Debtor Rights: **Séan P. O’Brien** and **Madeleine C. Wanslee**. Business Litigation: **Richard A. Segal**. Estate Planning & Probate: **Richard H. Whitney**. Insurance Coverage: **Peter Collins Jr.** Real Estate: **Gerald L. Jacobs**, **Scott A. Malm**, and **Christopher M. McNichol**.

In addition, four of our lawyers have been named to the *Arizona Rising Stars* list as some of the top up-and-coming attorneys in Arizona for 2013. Each year, no more than 2.5 percent of the lawyers in the state receive this honor.

Those selected, by practice area, are: Bankruptcy & Creditor/Debtor Rights: **Jody A. Corrales**. Bonds/Government Finance: **Eric A. McGlothlin**. Real Estate: **Mingyi Kang** and **Calvin J. Platten Jr.**

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## ET·Y·MOL·O·GY COR·NER

### House of Wisdom

Mathematician and astronomer al-Khwārizmī studied and wrote at the wonderfully named “House of Wisdom” in Baghdad during the early ninth century. Among his writings were works which introduced Hindu-Arabic numerals and algebra to Europe. We are familiar with his name today from the term given to a mathematical rule or principle, “algorithm,” the derivative of which comes from the poorly translated Medieval Latin word for his surname, “algorismus.”

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# PERSONAL NOTES



**Mingyi Kang** was installed as the Vice President of the Arizona chapter of the Asian Real Estate Association of America in January.

**Jody A. Corrales** is speaking at the 2013 Arizona State Bar Convention on two different panels: “You Want Me to Do What? Ethics for the Bankruptcy Practitioner” and “Technology in the Courtroom: The Future is NOW!” Also, Jody is featured in the March 2013 diversity issue of *Attorney at Law Magazine*.

**Andrew J. McGuire** presented a seminar on “Development Impact Fee Implementation” to the League of Arizona Cities and Towns in February.

**Craig A. McCarthy** is now chairman of the Ahwatukee Foothills YMCA Board of Directors.

**Thomas E. Halter** was quoted in the October 2012 Issue of *In Business Magazine* about the increasingly stringent requirements by lenders for borrowers trying to obtain or extend a loan.

**Barbara U. Rodriguez-Pashkowski** will be speaking on “Environmental Considerations” at the National Business Institute seminar on Land Use Law: Current Issues in Subdivision, Annexation and Zoning on May 13, 2013, at the Phoenix Airport Marriott.

**Sarah C. Smith** is now the Secretary of the Board of Directors for the Public Lawyers Division of the Maricopa County Bar Association for 2013.

**Kent E. Cammack, Martin T. Jones Sr., Scott A. Malm, Christopher M. McNichol, Séan P. O’Brien, and Madeleine C. Wanslee** spoke at the Real Estate Loan Enforcement Seminar hosted by Gust Rosenfeld on February 8, 2013.

In August, **Madeleine Wanslee** will square off in an oral argument against another practitioner in the field of bankruptcy law on “The Great Debate: Should Student Loans Be Discharged in Bankruptcy” at the American Bankruptcy Institute’s 21st Annual Southwest Conference in Lake Tahoe.

**Christopher M. McNichol** and his wife, **Mary Alexander**, danced as a couple at the Arizona Kidney Foundation’s “Dancing With the Stars” event at the Phoenician Resort, in front of about 1,000 guests. They won the 1st place People’s Choice Award. All proceeds went to support the Kidney Foundation.

**Christopher M. McNichol** and **Kent E. Cammack** spoke at the Arizona Trustee Association’s luncheon on recent case law relating to bidding at trustee sales.

**Martin T. Jones Sr.** and **Christopher M. McNichol** were speakers at the Information Management Network (IMN) Bank

& Financial Institution Special Asset Executive Conference on Real Estate Workouts held in Scottsdale in November.

**James W. Kaucher** wrote four chapters covering employment law in the 2013 edition of the *Arizona Business Law Deskbook*. He also presented “Hiring and Terminating Employees in Today’s Economy” at the Sterling Education Services seminar “Fundamentals of Employment Law” in Yuma.

**Martin T. Jones Sr.** and **Barbara U. Rodriguez-Pashkowski** presented at the Environmental Seminar hosted by Gust Rosenfeld that focused on Wal-Mart’s Environmental Due Diligence Procedures. Environmental consultants, civil engineers, and environmental attorneys from around the country were in attendance.

**Martin T. Jones Sr.** recently became a member of the National Association of Commercial Real Estate Due Diligence Professionals.

**Scott A. Malm** spoke at the Arizona Land Title Association annual conference on real estate issues in September and was the featured presenter at a recent seminar sponsored by the Arizona State Escrow Association.

Gust Rosenfeld sends out monthly environmental e-newsletters. Recent titles include: *Recent Water Developments* by **Shiela B. Schmidt**, March issue; *Can a Consultant Be Liable for Negligent Misrepresentation to Someone Other Than Its Client?* by **Martin T. Jones II**, February issue; *New EPA Guidance on the Applicability of the Bona Fide Prospective Purchaser Defense to Tenants* by **Barbara U. Rodriguez-Pashkowski**, January issue; *Hydraulic Fracturing: An Issue For Arizona?* by **Martin T. Jones Sr.**, December issue.

**Christopher Schmaltz** presented at the Arizona Airports Association 2013 Spring Conference in Page, Arizona, on “Airport and Aviation Legal Updates.” In May, he will be presenting at the Sixteenth Annual Public Practice Legal Seminar in Prescott, Arizona, on “Legal Issues Involving Local Governments - Public Rights Issues.” Chris was appointed to Arizona Forward’s regional body, the Valley Forward Regional Council, in January 2013. He continues to serve on Arizona Forward’s Sustainability Committee as Arizona Forward transitions to a statewide entity beginning in 2013.

In March, **Peter Collins Jr.** spoke to more than 50 pilots and mechanics on “Pilot’s Bill of Rights” at the FAA Scottsdale Flight Standards District Office, Greater Southwest Aviation Maintenance Symposium.

## Tech Corner | Safe & Secure

The marketplace has a way of efficiently filling perceived gaps. Nowhere on the tech side is this more exemplified than by **Silent Circle**, a “**global encrypted communications service**.” This company offers mobile apps for iOS- and Android-based devices that the company says are completely secure, based upon a peer to peer encryption that no one but the parties communicating can access.

**This is a valuable service for people concerned about the security of their corporate or organizational communications, as well as civil libertarians concerned about government observation of citizen speech and activities.** The service is likely a cause of heartburn for governments and people interested in fighting terrorism, international criminal activity and gathering as much information as



they can to prevent such activity. It is impossible to believe the Founders thought of such technology when crafting the 4th Amendment prohibition against “unreasonable searches and seizures.” Find more information at [www.silentcircle.com](http://www.silentcircle.com).

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## Supreme Court To Rule on Water Transfers

In January 2013, the United States Supreme Court, rejecting the Ninth Circuit’s analysis, unanimously held that the flow of water from one portion of a navigable body of water through a concrete channel or other artificial improvement into an unimproved portion of the same body of water does not constitute a “discharge of a pollutant” under the Clean Water Act. This case reaffirms existing U.S. Supreme Court precedent that no pollutants are added to a water body by transferring water between different portions of the same water body. *Los Angeles County Flood Control District vs. Natural Resources Defense Council, Inc.*, 133 S. Ct. 710, 184 L. Ed. 2d 547 (2013).

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