



NEWSLETTER

Enhance and Grow Your Law Practice with the Foothills Bar Association

By Glen J. Honig, Esq., FBA President

As you know, the Foothills Bar Association has seminars and social mixers throughout the year which provide you the opportunity to get to know other attorneys in your community. One of the great things about continuing membership in the group is the expansion of your network of experienced attorneys in a wide variety of practice areas. It has been my experience that our members are more than willing to help and mentor new attorneys, and provide assistance to other members of the group with questions that may require a referral to another attorney.

By your membership, you are automatically listed on the Foothills Bar Website, by your name and areas of practice, including a professional biography if you choose to provide this. Members are also listed in our annual Foothills Bar Directory. We print 500 directories each year, and distribute them to our members, with another 350 directories being distributed throughout the East County, including copies in many of the East County courtrooms, the filing office of the court, judges' chambers, the facilitator's office, public libraries, and various law firms.

Whether your practice area is civil litigation, criminal law, family law, bankruptcy, wills and trusts or any other area of the law, your expertise is valuable to the group. Consider sharing your expertise at one of the Foothills Bar Association Seminars. Being a speaker at our seminars provides you with an opportunity to expand your business.

Upcoming Events Calendar

April 14

**Estate Planning and Probate Section
12:15 - 1:15 p.m.**

Law Offices of Nancy Kaupp Ewin, Esq.
8166 La Mesa Blvd., La Mesa
Topic: TBA
Speaker: TBA

April 19

**Family Law Section
12:00 - 1:15 p.m.**

East County Court, Dept. 7
250 E. Main Street, El Cajon
Topic: How to Master DissoMaster
Speaker: Art Grater, Co-Creator of
DissoMaster

May 30

**Memorial Day
State and Federal Courts Closed**

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Our seminar speakers usually generate referral business by sharing their expertise in this setting and passing out materials they have prepared for the seminar. Please feel free to contact me with seminar ideas, and I will connect you with the proper section chairperson to discuss your proposed topics: Glen Honig, President, Foothills Bar Association, HonigEsq@Gmail.com.

Besides networking at our seminars and mixers, another great way to generate referral business is by writing articles in your area of expertise for the Foothills Bar Newsletter which is published electronically once per month. The articles can be informative and fun, we appreciate a good sense of humor. When I have a client in my family law office, cross-over issues often arise in many other areas of the law, such as taxation, bankruptcy, business, contracts, criminal and wills and trusts. When these issues arise, I like to be able to refer my clients to people who have demonstrated expertise in these areas. The first place I look for referrals is the Foothills Bar Directory. I can feel confident referring a client to an attorney I have known for a long period of time with a known expertise, who has written on the subject matter or been the speaker at a seminar on topic, thereby demonstrating their knowledge. If you would like to write an article or a series of articles, or a monthly column for our newsletter, please send your submissions to our newsletter chairperson, Cheryl Stengel, Esq., at clstengel@outlook.com.

Please take advantage of these professional opportunities and enhance your practice in 2016 and beyond!



A Duck is Still a Duck

By Keith A. Jones, Esq.

A recent California appellate decision refrained from quoting Supreme Court Justice Stanley Mosk's concurrence in a 1981 decision that *"if an object looks like a duck, walks like a duck and quacks like a duck, it is likely to be a duck."* However, appellate court would not have been out of place if it had done so.

The appeal involved a seller's unlawful detainer action to evict the prospective buyer of real estate under a "Contract of Sale Residential Property." Generally, a landlord in an unlawful detainer action seeks to evict the tenant if the tenant fails to timely cure a breach of lease after notice. A residential sales contract, unlike a lease, typically doesn't allow the buyer to take possession until after the sale closes, nor does it require the buyer to make monthly payments pending consummation of the transaction.

The parties had attempted to create a conditional sale under which the buyer took possession of the property with the obligation to consummate the purchase within 60 months. The contract required the buyer to pay taxes, insurance and homeowner' association fees, and to pay the seller monthly "Probationary Payments," for the 60 month period. The seller reserved the right to require the buyer to vacate on 5 days written notice if the buyer did not timely cure a default in remitting the probationary payments.

Unlawful detainer cases usually start with a claimed default under a lease. In this case, the buyer failed to timely pay a probationary payment prompting the seller to serve a 5 day notice of default. The seller then pursued its eviction lawsuit when the buyer refused to vacate. At trial, the buyer unsuccessfully argued that the contract was not a lease but instead concerned the sale of real property which could not serve as a basis for the seller to evict the buyer.

The appellate court dissected the Contract of Sale Residential Property, focusing on the rights and obligations under the agreement rather than the labels used in its terms. The terms did not require the buyer to make an initial down payment with the balance of the purchase price to be paid in monthly installments. Rather, it required the buyer to pay probationary monthly payments for 60 months tied to the amount of the seller's mortgage payment. The contract also required the buyer to pay 7 monthly probationary installments of \$500 to be credited as a down payment to the purchase price, with the entire purchase price to be paid by the conclusion of the 60 month period. The appellate court, like the trial court, found that none of buyer's payments were deemed installments towards the purchase price.

Under the contract, the seller had the right to possession after serving a 5 day notice of default on the buyer if the buyer defaulted on its monthly probationary payments. The appellate court also briefly addressed an ambiguity as to whether the probationary payments constituted rent. The appellate court referred to e-mails in which both parties used the word "rent." Further, the contract's terms made it clear that the buyer's monthly payments did not apply to the purchase price. In other words, buyer's probationary payments looked like monthly rent, acted like monthly rent, and served the purpose of monthly rent, so they were monthly rent.

As attorneys, let's hope a prudent buyer seeks legal counsel to get his or her ducks in a row before signing the contract, and thus avoid being labeled an unlucky duck.



**FOOTHILLS BAR ASSOCIATION
OF SAN DIEGO COUNTY**
Service, Professionalism, Collegiality

FOOTHILLS BAR ASSOCIATION FAMILY LAW SECTION MEETING

**Tuesday, April 19, 2016
12:00 pm – 1:15 pm**

LOCATION:

**East County Court House – Department 5
250 East Main Street, El Cajon, CA 92020**

TOPIC:

“How to Master DissoMaster”

- | | |
|--------------------------------------|-------------------------------------|
| -Advanced data entry | -Line-by-line special issues |
| -Paystubs v. Tax Returns | -Affordable Care Act issues |
| -K-1 and other Tax strategies | -Tactics |
| -Bonus reports | -Foreign income |

SPEAKER:

**Art Grater
Co-Creator of DissoMaster**

COSTS:

**Free for members of the Foothills Bar Association
\$10 for Non-Members and Guests (payable at the door)**

**This presentation qualifies for one unit (1.0 credit hour) toward
California Minimum Continuing Legal Education (MCLE).**

**For questions, please contact Traci Hoppes at
(619) 448-6500 or tracihoppes@yahoo.com.**

Notices

Looking for Speakers for Future FBA Civil Litigation Section Meetings:

If you have a litigation topic you would like to present at an upcoming Civil Litigation Section MCLE meeting, please contact Section Co-Chairs Mark Raftery at mark@markrafterylaw.com or Elizabeth Smith-Chavez at liz@smithchavezlaw.com.

Foothills Bar Association Notice of Board Meeting:

The Foothills Bar Association Board of Directors meets on the third Tuesday of each month. The next meeting will be on April 19, 2016 at the Kriger Law Firm, 8220 University Avenue, 2nd floor conference room, La Mesa, CA 91942. The meeting will begin at 4:45 p.m. If you want your voice to be heard in policy discussion and upcoming events planning or would simply like to learn more about the organization, your attendance is welcome.

The Family Court needs settlement conference judges. Please volunteer and share your expertise. Contact Kelly Fabros at 619-456-4065 or Kelly.Fabros@SDCourt.CA.Gov.

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REPRESENTATIVES

Dan Bacal, SDCBA	619-588-2064
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SECTIONS

FAMILY LAW:	Chair: Traci Hoppes
CIVIL LITIGATION:	Chairs: Cheryl Stengel, Mark R. Raftery & Elizabeth Smith-Chavez
CRIMINAL LAW:	Chairs: Daniel Cohen & Glen Honig
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NEWSLETTER	Chair: Cheryl Stengel

SUBMISSIONS

Your submissions are welcome! Send articles, letters, flyers, and other non-advertising [submissions to Cheryl Stengel at clstengel@outlook.com.](mailto:clstengel@outlook.com)

ADDRESS CHANGES

Send change of address or telephone number to Bradley Schuber at bschuber@krigerlawfirm.com

**Foothills Bar Association
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El Cajon, CA 92022**

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