



*non-profit corporation organized
under the laws of Arizona*

SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 38th YEAR

JANUARY 2012

Panel of Experts to Address Major Maintenance Items

SCOHA ANNOUNCEMENTS

FUTURE MEETING DATES AND TOPICS:

Feb. 21 Annual Legal Seminar

May 22 Legislative Update

SCOHA's WEB SITE:

Don't forget to check our web site!

SCOHA's web site address is
www.scottsdalehoa.com.

You can enter the member section by typing hoamember for the password.

What are your association's major maintenance expenditures? These expenses probably include painting, landscaping and roofing.

At SCOHA's January 24 meeting, our panel of experts will provide practical, hands-on perspectives for painting, landscaping and roofing.

Our panelists will be:

Kevin Wright with Indigo Contracting Services.

Matt White with Caretaker Landscape and Tree Management.

Kelly Kinion with Southwest Roofing Consultants, Inc.

We hope you can join us on January 24.

Reservations must be made in advance, so please make your reservations by calling Nancy Fagan at 480-945-7098 by noon on Friday, January 20 or send an e-mail to jeanne@ekmarklaw.com.

**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
January
24th
11:45 a.m.**

**Lakeview Room
McCormick Ranch Golf
Club
7505 McCormick Pkwy**

**\$15.00
Reservations
Required**

**Call Nancy Fagan at
480-945-7098 by
Friday, January 20**

480-922-9292

jeanne@ekmarklaw.com • www.scottsdalehoa.com

Litigation Issues Facing Associations

Summary of the November 15, 2011 Meeting

Curtis Ekmark, SCOHA's President, was the guest speaker. Mr. Ekmark began his seminar focusing on issues regarding legislation set to become law on January 1, 2012.

Per the recently-enacted legislation, transfer fees are now capped at \$400. This amount encompasses all fees paid to the association pertaining to services related to the transfer of property. It is important to note that neither working capital reserves nor enhancement fees are included in the cap. There is a penalty of up to \$1,200 per incident if more than \$400 is charged. Your CC&Rs will say what is included in the transfer fee.

Another hot issue today pertains to foreclosures and who owes the assessments, both present and past due. The homeowner is responsible for assessments up to the date of foreclosure. From that day forward, the bank who has taken possession of the property owes those fees. If the association has a lien on the property for past due assessments, that lien is wiped out by the foreclosure. If the association so wishes, they may sue the homeowner personally, but their lien is subordinate to government tax liens and whatever is owed to the lender. In some states, the association is ahead of the government and the lender with what's called a super lien, but unfortunately, that is not the case in Arizona.

Another issue is placement of real estate signs. They must be on private property, not on common areas.

As a result of last winter's hail storm, many homes around the valley sustained damage,

mostly to roofs and air conditioners. In instances such as these, please make sure the contractor you choose is licensed. Don't allow that contractor to act as an adjuster for your insurance carrier. For example, the contractor might say, "If you contract with me, I will accept whatever your insurance company will pay." On its face, that may sound like a good deal, but contractors are not allowed to negotiate claims. You know what they say, "If it sounds too good, it probably is."

Security is always a concern for any association. When you hire a security company, make sure the contract states that they will indemnify and defend the association in the event of an incident, not the other way around. If an incident occurs, the association is not free of culpability just because they hired a security company. That is why that clause is so important.

As more and more people lose their homes to foreclosure, there are a high number of renters. If a renter is causing problems and the landlord does not evict, check your documents regarding the association's ability to evict that problem tenant. If the landlord refuses to evict or handle the problem with his tenant, you may be able to file a suit against the owner with an injunction saying the landlord must evict.

In the past, if a homeowner disliked or disagreed with the way an association board was running that association, that unhappy homeowner would typically move and be done with it. Currently, however, with the housing market being what it is, that is not always an option. Now, in lieu of moving out of the

association, the disgruntled owner may sue the board and ask the board to buy their house. That is an extreme example, but homeowners sue for a myriad of reasons – failure to hold an annual meeting, etc. Associations must be vigilant and make sure they cross their T's and dot their I's.

If a board member submits a request for architectural approval for any home improvement, please be ensure that board member does not participate in the voting process with respect to that submission. If anyone objects to that change or home improvement, they won't be able to claim favoritism due to that member/homeowner's vote. The law requires you to disclose that kind of conflict. It is better for that board member to recuse him/herself from that decision, especially when it pertains to a variance. As always, make sure you know what your documents say. Some don't allow variances at all.

A fair housing complaint is filed with the Attorney General's office. If the association does not prevail, it must pay for the fees incurred by both sides. A fair housing complaint is filed when a homeowner feels discriminated against. For example, a homeowner may be confined to a wheelchair and cannot open the front gate, so the owner requests that the gate handle be placed lower so it is more accessible for him. If the association does not comply, a fair housing complaint may be filed.

The Americans with Disabilities Act applies to places of public accommodation, an example of which is an association's pool. Even though it is not a public place in the terms which are mostly understood, it is subject to the Fair Housing Act and, therefore, reasonable accommodations must be made. If the person requesting the accommodation

prevails, the association must allow whatever is requested, but the cost is borne by the requesting homeowner, i.e., a railing for easy access to the pool.

It is always difficult dealing with a homeowner who does not follow the rules, especially when it pertains to the use of a common area such as a clubhouse. Some documents stipulate if someone violates the CC&Rs, their rights to that clubhouse, for example, can be suspended. Before taking that step, always verify less formal avenues are exhausted, i.e., sending a letter to the offending homeowner.

To protect the association, any time a lawsuit is threatened, the association must turn it over their insurance carrier. If you wait too long, the claim can be denied. Always check the notice provision in your policy. This is kind of a Catch 22 situation. If your policy requires you to give notice of threatened litigation and you do so too often, your rates may go up, but if you fail to notify them in a timely manner and a suit is filed, they may deny coverage. The board must decide if the possible liability to the association is less than what they would have to pay to the carrier for the deductible and may choose not to notify the carrier. Each situation must be dealt with individually. Also, the carrier reserves the right to hire whatever law firm they choose whether you know or approve of that firm.

2012 Legislative Session Began January 9

It looks like it's going to be another tough battle at the State Legislature in 2012. SCOHA members need to become more active to put our legislators on notice that we'll be watching them closely this session. To that end, please contact your legislators to let them know you exist.

Here are some suggested topics to include in your message:

1. Tell them to stop passing laws that hurt homeowners associations and boards of directors.
2. Tell them you heard Curtis Ekmark speak about the potential for proposed legislation that would make it easier to amend the governing documents and that you are asking for their

support of any such legislation.

3. Currently, banks have first priority over an association's assessment lien. Given the currently economy, the banks are not foreclosing and so the homes sit vacant with no one paying assessments. Tell them you would support legislation that would flip an association's lien so it has first priority over the bank.

You can find your legislators by clicking on this link: <http://www.azleg.gov/> and then selecting the "How Do I Find My Legislators?" link under the FAQ heading on the left side of the page.

We appreciate your help in this important matter.

2012 DUES PAYMENTS:

Please note that your 2012 dues must be paid by the February 21 legal seminar in order to vote for the SCOHA Board of Directors and to attend the legal seminar. If you have not received your dues packet, please call Jeanne Malys at 480-922-9292 or e-mail her at jeanne@ekmarklaw.com.

MEMBER UPDATES:

Included with your dues packets are member update forms. Please be sure to send us your updates so we can ensure that the right people are receiving the newsletters and e-mail notifications.

LEGAL NOTICE:

The February 21, 2012 luncheon meeting of SCOHA is designated as the Annual Meeting of the Scottsdale Council of Homeowners Associations, a non-profit Arizona corporation. This January issue of the Newsletter serves as the advance and written legal notice of this Annual Meeting. Please note that a member association's 2012 dues must be paid in full in order to attend the Annual Meeting and legal seminar.
