



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

SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS  
**SCOHA NEWSLETTER**

IN OUR 40th YEAR

MAY 2014

## **Do You Know What Your State Legislators Did This Session That Affects Your Association?**

Several bills affecting homeowners associations will become law July 24, 2014.

SCOHA's President, Curtis Ekmark, has been closely involved in monitoring the legislature's activities throughout this session and he will provide details on these new laws and how they will affect your association.

Get a jump on analyzing any changes necessary for your association by attending SCOHA's meeting on May 20 at 11:45 a.m.

Please make your reservations as soon as possible, and please note that we must have a reservation to guarantee a lunch and a seat at the meeting.

Call Nancy Fagan at 480-945-7098 by 5:00 p.m. on Friday, May 16 for reservations or e-mail your reservation to [jeanne@ekmarklaw.com](mailto:jeanne@ekmarklaw.com).

### **SCOHA ANNOUNCEMENTS**

#### **SCOHA's WEB SITE:**

Don't forget to check our web site!

SCOHA's web site address is [www.scottsdalehoa.com](http://www.scottsdalehoa.com).

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

#### **OUR NEXT MEETING:**

We'll take the summer off and see you on September 23.

Have a fun and safe summer!

**SCOHA  
DATA TO  
REMEMBER:**

**Tuesday,  
May  
20th  
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, May 16**

**480-922-9292**

**[jeanne@ekmarklaw.com](mailto:jeanne@ekmarklaw.com) • [www.scottsdalehoa.com](http://www.scottsdalehoa.com)**

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# Amending Governing Documents

## Summary of the April 22, 2014 Meeting

Attorney Adrienne Speas was SCOHA's guest speaker.

She reviewed the list of typical HOA governing documents:

**Articles of Incorporation:** Creates the corporate entity, usually a nonprofit corporation.

**Bylaws:** All nonprofit corporations are required to have Bylaws which govern how the board is elected, when the association is supposed to hold its annual meeting, powers and duties of the board, terms of office for board members, etc.

**CC&Rs:** Recorded against the property and run with the land. They are considered a contract between the HOA and the owners and sets forth restrictions for use of the land.

**Plat:** Typically a map of the community which includes maintenance responsibilities and other important information.

**Architectural and Landscape Guidelines:** Can govern how the property looks and what is constructed or planted on the lot.

**Rules and Regulations:** Most governing documents empower the board to adopt rules and regulations. They may either cover just the common area or may extend to lots or units (depending on the power given by the governing documents).

It's also important to note the hierarchy of power of the governing documents:

Declaration (CC&Rs) and Plat  
Articles of Incorporation  
Bylaws  
Rules & Regulations and Architectural  
Guidelines

Amendments to the governing documents are an investment in the association. While the association can expect to spend money up front, many amendments will save the association time and money in the future. The association could save time and money by simplifying a complicated process or clarifying confusing language, making compliance easier to address in the future.

Other amendments may help to make the community a better place to live. For instance, the governing documents may be amended to give the association the means to build additional recreational facilities or meet the needs of a changing community.

If there are provisions of the association's governing documents that do not serve the association well, the association should consider adopting amendments to the governing documents.

Although individual amendments may be sufficient in cases where only a few changes are necessary, amended and restated governing documents provide the association with one clean document to reference instead of having to refer to the original documents and all amendments.

Due to the fact that the declaration and bylaws are a contract, it is important for the association to operate in accordance with the governing documents. If the governing documents do not match the way the association operates, the association should consider amending the governing documents. For example, if the declaration requires the association to maintain the front yards but every owner actually maintains their own front yard, the declaration should be amended to reflect this reality. Similarly, if the Bylaws call for one-year terms for Board members and they are serving two-year terms, the Bylaws need to be amended to reflect this change.

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The association needs to follow certain state and federal laws, regardless of what their governing documents allow or require. If the governing documents do not comply with the law, there is the danger that the association will violate the law by only following their governing documents. This could cause the association to spend money in correcting its unlawful actions. Federal laws govern antennas, satellite dishes, and flying the U.S. flag. Arizona laws exist regarding signs, flags, parking, proxies, insurance, budgets, assessments, fines, and fair housing - just to name a few. Even if the association's governing documents are only a few years old, there is a chance that some of the provisions are not in compliance with current law.

There are many amendments to the governing documents that can help the association run smoother. For instance, the declaration could be amended to give the association more options for enforcing compliance with the declaration. It could also be amended to clarify maintenance responsibilities or simplify the process for increasing assessments. These changes can lead to the association operating more efficiently in the future, saving time and money.

The first step in amending and restating the association's governing documents is to contact the association's attorney. They can help you determine whether the association needs only a few amendments to the governing documents or amended and restated governing documents. They can also provide direction as to which governing documents - the declaration, bylaws, and/or articles of incorporation - need to be amended.

Next, the association needs to check the governing documents carefully to determine if the document can be amended. Amendments must be executed pursuant to the amendment provision in the governing documents or in compliance with state statute, and it is important to pay attention to the exact language in the amendment provision. For

instance, if the amendment provision requires the members to acknowledge their consent, the signatures must be notarized.

The timing of amendments must be carefully reviewed. Many documents state that amendments can be made at any time, but others indicate a duration or renewal period.

Check the documents carefully to determine the number required for approval: Is it a majority vote? A specific percentage? 100% approval? Two-thirds approval? Is mortgagee approval required? How about developer approval?

Amendments should be uniform unless approved by all owners affected by the amendment.

Amendments can be challenged by owners. If the association is a condominium, the amendment can generally only be challenged within one year after recording. There is no statutory provision for challenges for planned communities.

What if amending the Declaration is too difficult? Ms. Speas emphasized that an amendment to the Rules, Bylaws or Articles of Incorporation cannot be used to amend a restriction in the Declaration.

For Declaration amendments, if the association is a condominium, it requires approval of owners holding at least 2/3 of the votes (unless it is a commercial condominium). The amendment must be recorded and sometimes the approval forms must be recorded (depends upon the amendment provision).

For Articles of Incorporation amendments, the amendment must be filed with the Arizona Corporation Commission and it must be published.

For Bylaws amendments, there is no requirement to record or file the amendment. The association cannot change quorum or voting requirement without approval of the members.

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## 2014 SCOHA OFFICERS AND DIRECTORS

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