



SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS  
**SCOHA NEWSLETTER**

IN OUR 41st YEAR

APRIL 2015

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

## **SCOHA ANNOUNCEMENTS**

### **FUTURE MEETING DATES AND TOPICS:**

Apr. 28 HOA Contracts  
May 19 Legislative Update

### **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.

## **HOA Contract Review and Negotiation**

Every association has contracts, ranging from the pool contract to the landscaping contract to the major reconstruction contract. Unfortunately, the pitfalls in a contract often don't become apparent until a problem arises.

At our April 28 meeting, Attorney Eric Boyd will discuss issues to consider for various types of contracts, as well as the type of pitfalls that can arise.

Call Daniel Mckinn at 480-922-9292 or send an e-mail to [dmckinn@ekmarklaw.com](mailto:dmckinn@ekmarklaw.com) by 2:00 p.m. on Friday, April 25 to make your reservation for the April 28 meeting.

**SCOHA  
DATA TO  
REMEMBER:**

**Tuesday,  
April  
28th  
11:45 a.m.**

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

**\$15.00  
Reservations  
Required**

**Call Daniel Mckinn  
at 480-922-9292 by  
Friday, April 25**

**480-922-9292**

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

---

# Landmines in HOA Collections

## Summary of the March 24, 2015 Meeting

Attorney Kathryn Battock was SCOHA's guest speaker.

There have been some recent changes to the assessment recovery terrain. Ms. Battock began with changes in the garnishment law.

Once an association obtains a money judgment, it can attempt to collect on that judgment through a wage or bank garnishment. According to a recent court decision, the costs for wage garnishments are not collectible against the debtor. This means that a wage garnishment is considered a cost of doing business for the association. However, so far, the costs of collecting through a bank garnishment can be recovered from the debtor.

There are several tools available to associations to achieve more effective garnishments. The association should keep detailed notes about the debtors, such as where they work and if they are on Facebook or other social media, such as LinkedIn which provides employment information.

Credit reports can be pulled for the debtors which might also provide employment or banking information.

The association can also hire a private investigator to obtain more information related to garnishment. This tends to be the most expensive step, so Ms. Battock suggests trying the other resources first.

She's also seeing an increase in the number of new defenses to foreclosure lawsuits, such as:

- I don't owe the assessments after the lawsuit was filed.
- I was in a payment plan.
- Offsetting payment of assessments.
- The lien expired.

Unless the debtor can prove that he/she has paid the assessments, these defenses can be defeated. It's important to check your governing documents, though, because some documents state a specific amount of time the foreclosure action must be filed from the date the lien was recorded.

There have been changes within the title industry that require associations to pay special attention to defendants listed in a foreclosure lawsuit. In the past, it was sufficient to list MERS, a clearinghouse for mortgage companies, to be listed as a defendant. Unfortunately, MERS did not always pass along the lawsuit information to the current lenders. Now, it's vitally important that the association list all of the applicable lenders in order for the title company to insure the property.

A possible shortcut to resolution may be a deed in lieu of foreclosure. This bypasses the foreclosure process in some cases. This typically works if the association knows the debtor won't pay the assessments or the chances of collection are slim.

A few law firms are offering "no cost" collection services. In a "no cost" contract, it requires that the debtor pay the attorneys' fees first instead of applying the payments to the assessments first. This does not comply with

---

---

state statutes, unless the debtor himself/herself specifically directs that the payments are to be applied to attorneys' fees first.

Also with the "no cost" contract, the association loses all control of the collection files and no oversight is permitted. If the association terminates the contract, it has to pay all of the attorneys' fees billed to date. Therefore, "no cost" hardly means "no cost."

Ms. Battock reviewed a few strategies associations may want to consider for assessment recovery. If debtors seem to be invested in their property, they seem to value the property and foreclosure may be a good way to get them to pay – they don't want to lose that investment.

If debtors are attempting to work something out with their lenders, they typically want to stay in their home. They may be good candidates for payment plans.

Social media is a great resource to use to obtain information about debtors. If debtors were paying assessments regularly and then stopped paying suddenly, searching for them on social media may reveal information about their current circumstances. This may allow an association to contact the debtor to work out a payment plan.

Finally, Ms. Battock reminded us that a judgment can be renewed after five years. If you want to keep pressuring the owner to pay, you need to renew that judgment every five years.

## **E-Mails Are HOA Records**

Have you ever thought about what could happen to all of those e-mails you are sending or receiving on behalf of the association (whether as a board member or a community manager)? Did you realize that those e-mails could be considered official association records?

Did you know that, if you don't keep those e-mails and other association electronic records in a separate place (such as, by use of a separate e-mail address), your entire inbox (and, potentially, your entire hard drive) could be subject to discovery and review in the case of litigation?

How can you avoid this from happening? Board members should consider establishing a separate e-mail account solely to send and receive e-mails that relate to association business. There are many different sources of free e-mail accounts that are completely web-based (meaning that nothing becomes stored on your computer). Additionally, board members should consider viewing documents through these web-based accounts, and not storing the documents on their computer. By only using the web-based e-mail account for association business, a board member could help prevent all of their personal e-mails from being subject to review and scrutiny in the case of litigation.

---

---

## 2015 SCOHA OFFICERS AND DIRECTORS

<b>Director</b>	<b>Phone No.</b>	<b>E-mail Address</b>
Curtis Ekmark – President	480-922-9292	curtis@ekmarklaw.com
Peter Wheeler Reiss – Vice President	480-994-4386	peterreiss4@gmail.com
Matt Metz – Treasurer		srca@mattmetz.com
Jaime Uhrich – Corporate Secretary	480-860-1122	jaimeuhrich@mccormickranchpoa.com
Walt Young	480-994-4331	DEAZWYBY@aol.com
Bob Rogers	480-585-0929	rrogers4542@gmail.com
Jeanne Malys – Recording Secretary	480-922-9292	jeanne@ekmarklaw.com

