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SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 41st YEAR

SEPTEMBER 2015

Scottsdale's Acting City Manager to Speak at September 22 Luncheon

We are looking forward to welcoming everyone back from the summer break! At SCOHA's next meeting, we will feature Scottsdale's Acting City Manager, **Brian Biesemeyer**, at 11:45 a.m. on **September 22, 2015**. He will impart his knowledge on a variety of topics, including Scottsdale's Water Resource Department and new developments from the City Manager's Office. You will also have the opportunity to ask him questions following the presentation.

Mr. Biesemeyer is the acting City Manager for the City of Scottsdale, as well as the Executive Director of the Water Resource Department.

Scottsdale Water has provided quality drinking water and advanced reclamation services to Scottsdale businesses and residents for over 40 years. In 2014, Scottsdale Water delivered an average of 67 million gallons of water a day to their customers and the department works around the clock to ensure that our drinking water surpasses all federal, state, and local water quality regulations. Their service area covers 185 square miles with over 88,000 active water accounts, about 90% of which are residential accounts.

Call Daniel Mckinn at 480-922-9292 or send an e-mail to dmckinn@ekmarklaw.com by 2:00 p.m. on Thursday, September 17 to make your reservation for the September 22 meeting.

SCOHA ANNOUNCEMENTS

WELCOME BACK!

We are excited to welcome back the members of SCOHA, as well as some cooler weather, to the Valley!

2015 HOA Handbooks will also be handed out at the September 22 meeting.

SCOHA's WEB SITE:

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

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

**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
Sept.
22nd
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
Thursday, Sept. 17**

480-922-9292

dmckinn@ekmarklaw.com • www.scottsdalehoa.com

Legislative Update 2015

Summary of the May 19, 2015 Meeting

The Legislature passed several new laws pertaining to homeowners associations. They became effective July 3, 2015, except for SB1048 which will become effective December 31, 2015.

HB 2084: Disclosure

This new law amends A.R.S. §§ 10-11622, 33-1242, 33-1256, 33-1803, and 33-1807. It states that an association must attach a statement to its annual report to the Corporation Commission with the address for the association, the name of its management company, the association's or management company's telephone number, e-mail address, website (if any), and fax number (if any). The association must make changes to their information by filing a notice with the Commission within 30 days. This bill removes the requirement that the association file a notice with the county recorder containing its name, address, and telephone number.

SB 1048: Vexatious Litigants

This law modifies existing statutes A.R.S. §12-302 (Court Fees) and A.R.S. § 12-3201 (Vexatious Litigants). The new law prohibits courts from waiving court fees/costs in a civil action filed by a self-represented person who previously was declared a vexatious litigant by any court. If a self-represented person previously granted a waiver or deferral of court fees/costs is later found to be vexatious by any court, the court is required to order that litigant to pay any waived/deferred fees/costs. It also allows a party to petition the court to have a litigant declared vexatious, even if a prior request was denied (or never ruled upon) by the court. In this last point, the party can petition for this declaration even when there is not an open case involving that self-represented person before the court. This amendment goes into effect on December 31, 2015.

SB 1091: Director Removal

The procedure for removal of a director in planned communities (A.R.S. § 33-1813) and condominiums (A.R.S. § 33-1243) is amended by this new law. Currently, members may petition for a special meeting to vote on the removal of a director. This bill provides that only members who are eligible to vote at the time they sign the removal petition would be counted towards the minimum number of signatures required on the petition. Also, only members who are eligible to vote would count towards a quorum at the special meeting called to vote on the removal of the director. Finally, only members who are eligible to vote at the time of the special meeting would be able to vote on the removal of a director.

HB 2578: Amending the Purchaser Dwelling Act (A.R.S. §12-1361 et seq.)

This new law significantly changes the procedural requirements under the Purchaser Dwelling Act for bringing a construction defect claim (i.e., "dwelling action"). Please be warned that this new law is complicated and the interplay between this new law and an association's governing documents is even more complicated. The failure to get this process right may result in the loss of a valid claim. Thus, we strongly suggest that any association with construction defects immediately contact their general counsel for a comprehensive review of the situation and to prepare a plan.

Notice of Claim to the Seller (i.e., the party responsible for the defect)

An association must provide written notice by certified mail specifying, in detail, the basis for the claim. There is an exception for life and safety issues. The notice of claim must include a detailed and itemized list that describes each alleged construction defect, the location that each defect has been observed in each dwelling that is the subject of the notice, and the impairment to the dwelling that has occurred as a result of each defect or is reasonably likely to occur if the defect is not repaired or replaced. The association's governing documents may also contain requirements for the notice of claim to the Seller. Documents may contain a litigation approval requirement that may apply at a certain point.

Right to Cure Period

The Seller has a statutory right to repair and replace the alleged defect. Within 60 days after receipt of the notice of claim, the Seller must send the association a written response. The response may state the Seller intends to repair or replace the alleged defects and/or pay money or other consideration. If the response indicates the intent to make repairs, the response must describe the repairs to be made and time in which they are to be performed. The Seller must make "reasonable efforts" to begin the repairs or replacements within 35 days after the Seller's notice of intent to repair/replace the defects, or 10 days after any required permits are obtained, whichever is later. The association is not required to give a release of claims if the Seller elects to make repairs. If the response contains an offer to pay money or other consideration, the association may reject the offer and file a dwelling action – but only after the Seller has completed the repairs it did choose to make. If the association wants to accept the offer to pay money or other consideration, the parties may negotiate a release of claims.

Legislative Update 2015

HOA Tip of the Month

Summary of the May 19, 2015 Meeting

If the Seller does not respond to the community association's notice of claim within 60 days, the association may file a dwelling action. At the conclusion of any repairs or replacements, the association may file a dwelling action and may include a claim for inadequate repair or replacement if applicable. The statute of limitations and statute of repose are tolled for thirty (30) days after substantial completion of the repairs or replacements.

Filing a Dwelling Action or ADR (if applicable)

If the association's governing documents contain a commercially reasonable alternative dispute resolution ("ADR") process (i.e., mediation and arbitration), either the Seller or the association may invoke that process. The governing documents will dictate timelines and requirements for the ADR process. Before filing a dwelling action, the association must provide written notice to its members and hold a member "Town Hall" meeting. In addition to any requirements contained in the governing documents, written notice to the members must include "material information" about the dwelling action. Material information includes a statement that describe the nature of the action and the relief sought or any settlement offers or demands. The expenses and fees the association anticipates will be incurred, directly or indirectly, to prosecute the dwelling action, including: attorneys' fees, consultant fees, expert fees, and court costs. The association then holds a "Town Hall" meeting with the members to discuss the dwelling action. The governing documents may also contain requirements for the "Town Hall" meeting. When filing a dwelling action, the association has an "affirmative duty" to demonstrate compliance with the governing documents and with the statute. If the association fails to comply with this statute or with its governing documents, the lawsuit shall be dismissed. The Seller has standing to assert the association's noncompliance with any applicable ADR provisions.

After Litigation (or ADR if applicable)

Under the new statute, attorneys' fees, expert fees and costs are no longer authorized for the successful party. The association must disclose a plan to the members for any proceeds received from the dwelling action within 30 days after the proceeds are received. The association shall preserve records adequate to demonstrate compliance with the statute for five years.

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

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