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SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 41st YEAR

NOVEMBER/DECEMBER 2015

Litigation Issues Affecting HOAs - November 17

Attorney Curtis Ekmark will be SCOHA's speaker at the next luncheon meeting at **11:45 a.m.** on **November 17, 2015**. He will focus on litigation issues facing all associations, as well as potential legislation that will be addressed by state legislators this coming session. Finally, he'll answer your HOA-specific questions.

Mr. Ekmark earned his undergraduate degree from Marquette University and received an academic scholarship to attend Pepperdine University School of Law. While at Pepperdine, he was a member of the Law Review and the Phi Delta Phi legal honors fraternity. He was named the Terry Giles Scholar and the Odell McConnell Scholar before graduating with honors. Upon graduation from law school, Mr. Ekmark accepted a judicial clerkship with Justice Roland B. Day on the Wisconsin Supreme Court.

In addition to serving as President on SCOHA's Board of Directors, Mr. Ekmark practices in the area of community association law, with an emphasis on litigation. He frequently lectures on association issues and has won several significant cases in this area.

We look forward to seeing you on November 17. Please Call Andrea Moscarello at 480-922-9292 or send an e-mail to e&e@ekmarklaw.com by 2:00 p.m. on Friday, November 13 to make your reservation for the November 17 meeting.



**SCOHA
ANNOUNCEMENTS**

UPCOMING MEETINGS:

Jan. 26 Annual Meetings
Feb. 23 Annual Legal Update

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.

**WISHING EVERYONE A
HAPPY THANKSGIVING
AND HOLIDAY SEASON!**

**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
November
17th
11:45 a.m.**

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

**\$15.00
Reservations
Required**

**Call Andrea Moscarello
at 480-922-9292 by
Friday, November 13**

480-922-9292

e&e@ekmarklaw.com • www.scottsdalehoa.com

Dealing With Difficult People

Summary of the October 27, 2015 Meeting

During the October 27 meeting, attorney Adrienne Speas was joined by a panel of speakers to outline how to manage dealing with difficult people. The speakers included Jean-Marie Bellington, President of Tri-City Property Management, and Doug Brown, President of Sands McCormick.

The presentation began by detailing what an association's rights and obligations are regarding dealing with difficult members. Mrs. Speas pointed out that an association does not have an obligation to answer every question posed to it by a member. An association can decide if and when to answer certain questions if they so choose. The association must, however, make records requests available for review when requested.

Ms. Bellington introduced us to the first type of difficult person; the bully. This person dominates meetings and tries to control all discussions, often interrupting and speaking for too long in the process. To combat the bully, Ms. Bellington recommended first and foremost, to be as professional as possible. Another tip was to not allow The Bully to go over the allotted time. Each community member should have the same rules as the next community member, even for speaking times. Finally, she recommended that it is helpful to save the open forum portion of meetings until the end, to ensure you get through your entire agenda.

Additional tips for surviving board meetings to combat dealing with difficult people included the location of the meeting, the room set up, providing a copy of an agenda, setting a time limit for each speaker (and upholding that limit for all speakers), setting up to have the meeting recorded by either video or audio, or having security or police present at your meeting.

Another type of difficult person covered by the panel was the member who won't take "no" for an answer. This type of person refuses to stop calling or e-mailing the board, even when the problem they originally had may have already been decided or resolved. With this person,

sometimes you may have to remind him or her that the question has been "asked and answered". Also helpful to reduce misunderstandings between you, the community member, and all other community members, is to have them put everything in writing. This way, words cannot be taken out of context or be twisted around to mean something they did not intend.

The next thing Mrs. Speas discussed was the concept of agency, in a legal sense. Agency is a fiduciary relationship that arises when one person assents to another person acting on the principal's behalf and the agent agrees to do so. This means that a director or committee member can be an agent of the association if given authority by the board.

Apparent authority also exists when the principal's conduct leads a third party to reasonably believe the principal has authorized the agent to take action or make representations. Apparent authority could exist if the board's conduct leads an owner or resident to reasonably believe that the board has authorized the director or committee member to take action on behalf of the association. It is important to be careful who you give authority to, and to be especially careful when it comes to contracts. Training sessions are also helpful tools for board members or committee members.

Next, the panel moved to discussing issues with difficult people within the board itself. The first type of person discussed was a director "going off the deep end". This person could be acting intensely or erratically towards one person or group. If this starts occurring within your board, the association should be concerned, should get involved, and needs to consider their options of how to move forward.

Another type of problematic board situation is when there is a divided board. In this type, a person could be in disagreement with a decision that the board made and is voicing this dissent throughout the community. It could even go as far as this divided board member leaking legal opinions, letters, and information that is attorney client privileged to the other homeowners.

Summary of the October 27, 2015 Meeting

Another type of difficult person on the board was the design “consultant”. Mrs. Speas gave an example of a redesign being done in a community and the chairperson of the committee making recommendations to the renovations as they are being completed. This could end up costing the Association, as the extra cost of any changes will get charged to the Association, even if just one person was making the decisions to make edits. To monitor this type of problem, Mrs. Speas suggested having specific language in the contract with a contractor stating that all changes must be submitted in writing to the Association.

In order to help keep each board member in the appropriate state of mind, the panel thought it was important to remind board members of their responsibilities. Board members have a legal obligation to act in the best interest of the entire community and association, not for them. Also, directors should treat all homeowners fairly and equally. Each director should only act under the authority that the Board granted him or her.

Another tip recommended by the panel was to institute a Code of Conduct for the board. While there is no legal requirement for a board to have one, they can be helpful to help set expectations and serve as a frame of reference. It is also important to remember that codes of conduct are not binding unless compliance is required by the articles or bylaws.

Finally, the panel discussed what steps are important in neutralizing a rogue board member. They expressed that communication and direction to the director to stop the offensive act was the best first step. Communication with affected members and third parties to explain the limitations of the director’s actions was also important. In extreme instances, removing the director from his or her office and/or committee positions or director recall would be necessary.

HOA TIP OF THE MONTH:

Holiday Decorations – How Much is too Much?

I’m a huge fan of the Christmas season, and love to see all of the holiday lights and decorations. However, when my neighbor (whose house is only ten feet from mine) decides to pound nails into his home to hang his Christmas lights at 2:00 a.m. and then leaves those blinking lights on all night long (keeping me awake as they blink through my shades), I find myself turning into a bleary-eyed Scrooge. What happened to my holiday cheer?

As associations go through the holiday season, it might be worthwhile to note what problems arise and to determine if it is time to update the association’s guidelines about holiday decorations. Do the guidelines specify the length of time that decorations can be placed on the outside of the home? Do they specify the time of day that decorations can be installed? Do they specify the hours that holiday lights can be displayed? Some of these issues would seem to be common sense, but, as exhibited by my neighbor, that is not always the case.

Another issue that may exist for an association relates to where decorations can be placed. If the association maintains the front yards, can owners install holiday decorations in the front yard? If so, are there any limitations to what can be installed? Can owners install holiday lights on landscaping maintained by the association?

Sometimes problems arise with the number of lights and decorations installed on a lot. In one community, an owner put so many lights on his home that it created a constant traffic jam every evening by everyone wanting to view the lights, creating a nuisance for all of the owner’s neighbors. Therefore, do the guidelines specify that the displays will only be allowed so long as they do not become a nuisance for the community?

So, to help keep the holiday cheer in your community, the association may consider whether it needs to adopt any additional guidelines relating to holiday decorations. After the holidays have passed is a good time to adopt new guidelines and inform the owners so that they can prepare for next year. If you have any questions about the association’s authority to adopt guidelines governing holiday decorations, please feel free to contact Lynn Krupnik at 480-922-9292 or lynn@ekmarklaw.com.



Dear SCOHA Members:

It is crucial that all SCOHA members contribute to a legislative action fund in order to protect associations from harmful legislation. We anticipate a difficult challenge again this year at the Arizona legislature and will have no chance of protecting associations and the people who live in them unless we hire a lobbyist. We cannot, however, hire a quality lobbyist without the financial assistance of our membership.

During the past few years, we have seen things change for the worse down at the legislature. Last year, the legislature passed new laws pertaining to community associations. We expect similar battles this year.

The bottom line is that we need a lobbyist in order to make sure that any new laws regarding associations are good for associations and the people who live in them. We cannot hire a good lobbyist without a substantial financial commitment from our members. To that end, we are asking that every association make the best possible donation that it can. At a minimum, we are asking for \$1.00 per home from every association. Please make your check payable to SCOHA and mail it to 6720 N. Scottsdale Road, Suite 261, Scottsdale, Arizona 85253.

This is certainly a worthwhile investment when you think of the risks associated with harmful legislation. It is a small price to pay in order to ensure that we have laws that will make our communities better rather than worse.

Thank you for your consideration with respect to this important issue. As always, please do not hesitate to contact me with any questions.

Sincerely,

Curtis S. Ekmark
President
