



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

SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS  
**SCOHA NEWSLETTER**

IN OUR 41<sup>ST</sup> YEAR

JANUARY 2016

## Scottsdale Water - January 26, 2016

Happy New Year SCOHA Members! **Nicole Sherbert**, with Scottsdale Water, will be the speaker at the next luncheon meeting at **11:45 a.m.** on **January 26, 2016**.

Ms. Sherbert is a Public Information Officer within the City of Scottsdale's Water Resources Division. She also works hard maintaining the media information on the new City of Scottsdale website. Ms. Sherbert will cover all things water and how they may relate to homeowners associations, in addition to answering any questions. You will not want to miss out on this informative presentation!

We look forward to seeing you on January 26. Please Call Andrea Moscarello at 480-922-9292 or send an e-mail to [info@ekmarklaw.com](mailto:info@ekmarklaw.com) by 2:00 p.m. on Friday, January 22 to make your reservation for the January 26 meeting.

### SCOHA ANNOUNCEMENTS

#### UPCOMING MEETINGS:

- Feb. 23 Annual Legal Update
- Mar. 22 Online Defamation
- April 26 TBD

#### SCOHA's WEB SITE:

SCOHA's web site is down temporarily while we make some improvements. The new website will be announced once it is up and running! Thank you for your patience.

**WE HOPE EVERYONE HAD A  
HAPPY HOLIDAY SEASON!**



**SCOHA  
DATA TO  
REMEMBER:**

**Tuesday,  
January  
26th  
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, January 22**

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# Litigation Issues

## Summary of the November 17, 2015 Meeting

The November 17 luncheon, featuring speaker Curtis Ekmark, focused on Litigation Issues. Curtis focused on litigation issues facing all associations, as well as potential legislation that will be addressed in the upcoming session.

The presentation began by detailing how litigation has changed over the past 20 years. Curtis described how what once was a more casual encounter in the courtroom and Judge's chambers has become a more formal process. Litigation has also become more expensive, so it is even more important to cross your T's and dot your I's. In order to avoid this costly litigation process, Curtis reminded us of some important tips.

The first reminder was to not delay. Deadlines are a huge part of litigation, and putting off any sort of notice or anything can end up costing you big time.

Additionally, on an insurance front, Curtis reminded us that not all insurance carriers are equal. Make sure to obtain good D&O insurance, because the time to be skimpy is not when you may be at risk for costly litigation. Also, Curtis recommended to ensure that the insurance covers breach of contract claims, as CC&R related claims tend to be. Make sure the policy covers non-monetary claims as well. Finally, make sure that the insurance allows for you to be able to choose your lawyer in the event that you get sued.

Curtis also shed some light on an important Latin term called "res judicata". In this instance, when a person is successful in his/her claims in his/her lawsuit, everyone with the same claims can then sue and win automatically. The claims cannot be relitigated once a final judgment has been entered on those claims, even if different people are suing the Association later. This is why it is important to remember that even if a matter looks small on the surface, it may have lingering consequences underneath.

Another area of possible costly consequences is Fair Housing. Curtis reminded us that if a person makes such a request in your community, you must make sure to have a reasonable dialog with the person making the request. It is also important to remember that you may request proof of disability but you have to be careful, and can only make such a request if the disability is not obvious.

Curtis also discussed that it is important to make sure that you have the authority to do what you are trying to do. He gave a few examples. In an ongoing case from this past year, one Association had an issue with their irrigation pipes breaking, and thus had to re-do the irrigation in the parks. The board decided to install half the common areas with normal landscaping and complete the other half with xeriscape landscaping. Some community members accused the board of being "ecological terrorists" for trying to destroy the natural grass and sued the Association. One of the arguments of the case is whether the board had the authority to change the grass in the Common Areas.

Similarly, we have seen two lawsuits this year regarding pickleball courts being added. In these cases, the currently standing sport courts were changed to include pickleball, and the Associations began receiving noise complaints and accusations that they did not have the authority to change the use of the Common Area. These types of cases serve as a reminder to be aware of what specifically you have the authority to do.

Another significant point Curtis discussed was the open records law. In this, Curtis mentioned how if you receive a records request from a homeowner, you must respond to the request, even if you are short on time or feel like there is not proper purpose for the request. The request for records must be answered, but you are not obliged to answer specific questions. It is important not to avoid or ignore these requests when they come in.

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In addition, the open meeting law was another topic discussed. Curtis explained that if a majority of the board is discussing Association business, then it is considered an open meeting, and you must send proper notice and follow the guidelines of an open meeting. This also applies to emails. If you send a “reply all” message to the board in discussing Association business, it becomes a discussion and may violate the open meeting law. To combat this issue, Curtis suggested to “bcc” the board when you send the email, that way you are unable reply to all parties at once.

Another point Curtis made regarding how to avoid costly litigation was to fully read and understand any contract you are involved in. Make sure to clarify the quality of work that is expected, the time frame, and to make sure that indemnification is in your favor. Indemnification issues become very important when you are sued so it is key to make sure that it is sorted out beforehand.

Curtis also made clear that litigation is inevitable in our society. He advised that you can seek to avoid it, but if you need to engage in litigation, try and make it as efficient and effective as possible. Always try and frame any lawsuit that you may encounter as a “who are we trying to protect” situation, instead of a “who are we trying to pick on” situation. This will help in making the judge more sympathetic and understanding towards HOAs. Moreover, if you are sued, carefully evaluate your settlement options and make sure it is a global perspective to determine what would be best for everyone now and in the future. Finally, if it looks like a lawsuit may be coming, or if you are currently engaged in a lawsuit, do not email your fellow board members regarding the lawsuit. Emails are discoverable, even if they are deleted or destroyed. Do not try and delete emails or anything off of your computer, as it can get you in big trouble and end up being very costly.

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WATER-SAVING DEVICE  
**#88**

**LET YOUR LAWN GO DORMANT (BROWN) DURING THE WINTER. DORMANT GRASS ONLY NEEDS TO BE WATERED EVERY THREE TO FOUR WEEKS, LESS IF IT RAINS.**

There are a number of ways to save water, and they all start with you. To learn more visit [wateruseitwisely.com](http://wateruseitwisely.com)

**WATER USE IT WISELY**

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# 2016 Legislative Session Began January 19

It looks like it's going to be another battle at the State Legislature in 2016. SCOHA members need to continue to be active by putting 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.

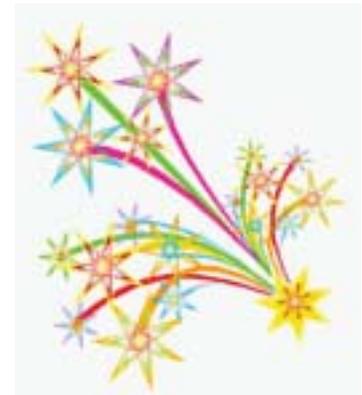
Here are some suggested topics to include in your message:

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.

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!



## **2016 DUES PAYMENTS:**

Please note that your 2016 dues must be paid by the February 23 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 Andrea Moscarello at 480-922-9292 or e-mail [info@ekmarklaw.com](mailto:info@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 23, 2016 luncheon meeting of SCOHA is designated as the Annual Meeting of the Scottsdale Council of Homeowners Associations, a nonprofit 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 2016 dues must be paid in full in order to attend the Annual Meeting and legal seminar.

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