



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

SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 42nd YEAR

MARCH 2016

Contracts - March 22, 2016

SCOHA ANNOUNCEMENTS

UPCOMING MEETINGS:

April 26 - What Would You Do

May 24 - Annual Legislative Update

SCOHA's NEW WEB SITE:

SCOHA's web site has been restored and remodeled by our esteemed Treasurer, Matt Metz.

Check it out here:

www.scottsdalehoa.com

For the March 22, 2016 meeting, SCOHA Board Members **Curtis Ekmark** and **Matt Metz** will discuss **contracts**. Mr. Metz will cover the specifics of writing good landscaping contracts and Mr. Ekmark will discuss contracts in general, as they can be confusing and tricky to navigate. There will also be time to address any questions you may have on the topic.

The March 2016 meeting will be on **Tuesday, March 22, 2016** at noon.

Call Andrea Moscarello at **480-427-2884** or send an e-mail to **andrea.moscarello@carpenterhazlewood** by 2:00 p.m. on Friday, March 18 to make your reservation for the March 22 meeting. We look forward to seeing you there!



**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
March 22,
2016
11:45 a.m.**

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

**\$15.00
Reservations
Required**

**Call Andrea Moscarello
at 480-427-2884 by
Friday, March 18**

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andrea.moscarello@carpenterhazlewood.com

Annual National HOA Case Law Update

Summary of the February 23, 2016 Meeting

SCOHA President, Curtis Ekmark, provided his annual review of recent HOA cases around the country for the February meeting.

He began the presentation by reminding us that it does not matter what is written in legislation; what matters is how it is interpreted. That is why the litigation process is so important, since it helps in drafting and interpreting documents in the future. We also learned that yet again, it seemed like the number of cases has doubled, which means that America is becoming very litigious. In a tour of cases around the country, Curtis demonstrated this point.

First, in a case from New Hampshire, certain Owners wanted to make an amendment affecting the use of the limited common elements. The court ruled in this matter that you need unanimous consent to do so.

In a case in Idaho, the members wanted to make an amendment prohibiting short term rentals, and the court ruled that they could amend documents to not allow short term rentals, since it was a modification of an existing restriction, not the creation of a new restriction.

In California, severe dust allergies of owners in a 2nd floor unit caused those owners to want to install new hardwood floors to the unit. The Association approved of the changes, but requested that they take soundproof measures for the neighbors below them. When they did not install those soundproof measures, the owners sued the Association on a fair housing claim. The court ruled in favor of the Association.

From a case in Georgia, a condo owner was parking in an illegal spot and sued the

Association in another fair housing claim. The Association's defense was that there was no statute of limitations, meaning that there was a new violation being committed by the owner every time he parked illegally. The court ruled in favor of the Association in this case.

From another case in Georgia, some owners installed reflective covering tint on their windows. In this case, the court ruled in favor of the Association in another fair housing claim, finding no basis of racism.

In Nebraska, an Owner argued that the Architectural review committee was making decisions on what to approve or disapprove based on what looks good, but the court sided with the Association, meaning that reasonable decisions were being made by the committee and they could not be overturned.

In another case out of Nebraska, a group of renters were having heating and cooling issues and the court ruled in their favor. This means that if you have renters and you are having issues, the Association could be sued for loss of income.

From a case in Oregon, the plaintiffs had a history of litigation against the Board and in order to keep up with the amassing legal fees the Board was accruing, they put in assessments to pay legal fees. The court ruled in favor of the Association in this case, saying it was okay to use the assessments of the owners for legal fees.

From an interesting situation in Ohio, an employee in the law office made an error in the HOA documents when filing them with the court. When an owner decided to challenge an issue that arose, the owner tried to use the fact that the mistake existed to get out of complying with the documents. The court ruled that mistakes

happen, and did not rule in favor of the owner just because a typographical error had occurred.

In another case, in Utah, the court ruled that the Association is not required to provide email and phone numbers when requested by an owner. Instead, written home addresses are sufficient.

In a case out of Illinois, the court ruled that the Association could not sue a contractor because of a certain issue, but could only sue the developer. This was an interesting finding, as we have seen the exact opposite result here in Arizona.

In another interesting case from the Midwest, a Missouri court had another insurance matter to examine. Of the 58 condos in an Association, a fire had destroyed 9 of the condos and the Association was awarded \$1.1 million

from their insurance company to help with the damage. The Association was able to repair the damages and had just over \$550,000 leftover. The 9 owners with fire damage felt as though they should be awarded the money, but the court ruled that it should be split up equally between all 58 condo owners.

Another cautionary case coming from Texas had to deal with HOA document interpretation. The Association would typically maintain the storm drains, but when one of the drains backed up and caused damage to a unit they found themselves in a sticky situation. Their governing documents did not say that they are supposed to maintain those areas, but since they had been maintaining them, the court ruled that the Association must be responsible.

Congratulations to the 2016 SCOHA Board!

Thank you for submitting your ballots for the SCOHA board election. All seven board members were re-elected.

Director

Curtis Ekmark

Matt Metz

Walt Young

Jaime Uhrich

Elaine Anghel

Kathy Knecht

Bill McCarthy

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Ethics, Codes of Conduct and How to Stay Out of Trouble

Ethics

There isn't a formal code of ethics for board members, like there is for attorneys. According to Arizona Revised Statute ("A.R.S.") Section 10-3830, board members have a fiduciary duty to their association. In other words, they have an obligation to act in the best interest of another party.

Business Judgment Rule: A legal principle that makes officers, directors, managers, and other agents of a corporation immune from liability to the corporation for loss incurred in corporate transactions that are within their authority and power to make when sufficient evidence demonstrates that the transactions were made in good faith.

Safe Harbor: A provision of a statute or a regulation that reduces or eliminates a party's liability under the law, on the condition that the party performed its actions in good faith.

Conflict of Interest: For planned communities, conflict of interest is addressed in A.R.S. Section 33-1811 and for condominiums, it's A.R.S. Section 33-1243(C). If any action would benefit a board member or a close family member, the board member must declare a conflict of interest. This must be done in an open meeting before discussion or action on the matter. That board member may then vote on the matter. A contract entered into in violation of this procedure is void.

According to A.R.S. Section 10-3862 of the Nonprofit Corporation Act, a conflict of interest exists when a board member or related person is a party to the transaction or has a financial interest in the transaction that would reasonably be expected to affect their judgment. A board member must disclose the conflict and reasonably necessary information about it, and the action must be approved by a majority of disinterested directors (must be at least two).

Codes of Conduct for Boards

There is no legal requirement for a board to have a Code of Conduct. It is not common for HOA boards to have a Code of Conduct. A good rule to follow is to be a good team member. Your association attorney can draft Codes of Conduct when necessary – they can be tailored to fit the particular situation.

