



non-profit corporation organized
under the laws of Arizona

SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 39th YEAR

JANUARY 2013

Handling an Insurance Claim - Start to Finish

SCOHA ANNOUNCEMENTS

FUTURE MEETING DATES AND TOPICS:

Feb. 26 Annual Legal Seminar
Mar. 26 Landscaping
May 21 Legislative Update

SCOHA's WEB SITE:

Don't forget to check our web
site!

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

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

Navigating the insurance claim process can be a challenge. At SCOHA's January 29 meeting, attorney Adrienne Speas with Ekmark & Ekmark, LLC, will guide us through this process, from working with the carrier and estimator in making the claim to working with the owner in making repairs to the unit.

We hope you can join us on January 29 at 11:45.

***PLEASE NOTE THE DATE CHANGE FROM
JANUARY 22 TO JANUARY 29.***

Reservations must be made in advance, so please make your reservations by calling Jeanne Malys at 480-922-9292 by noon on Friday, January 25 or sending an e-mail to jeanne@ekmarklaw.com and provide your name and association.

**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
January
29th
11:45 a.m.**

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

**\$15.00
Reservations
Required**

**Call Jeanne Malys at
480-922-9292 by
Friday, January 25**

480-922-9292

jeanne@ekmarklaw.com • www.scottsdalehoa.com

Litigation Issues Facing Associations

Summary of the November 27, 2012 Meeting

Curtis Ekmark, SCOHA's President, was the guest speaker.

He began by issuing a word of caution about being careful what to say in e-mails. E-mails are discoverable in litigation and have proven to be damaging to some associations' cases. He's also finding that opposing parties are now requesting production of Facebook and Twitter accounts in litigation matters.

Mr. Ekmark reviewed two large cases currently pending in the state. The first lawsuit was filed in Pinal County against 60 associations and 15 management companies relating to transfer fees charged at closing. If an association has questions about the transfer fees charged at closing, it should contact its legal counsel to review them to ensure the association is complying with the law.

The second large case is a class action against every company that offers "free" collection services. The complaint is that these companies are gouging homeowners to make up for the fact that they are not charging the association for the collection process.

Currently, one of the biggest issues is whether certain associations can tow. In order to tow, the streets must be the private property of the association, signage must be placed in visible locations throughout the private property and the

association must comply with municipal codes. An association cannot tow off of public streets.

When negotiating contracts with vendors, the association should ensure the vendor will indemnify the association. Mr. Ekmark has seen many association contracts in which the association agreed to indemnify the vendor. This does not protect the association.

In the administrative law judge process, the judge will not award attorneys' fees. In a recent case, Mr. Ekmark's firm was successful in getting an ALJ matter dismissed on behalf of the association. Unfortunately, the ALJ did not award the association its attorneys' fees. This association is contemplating proposing an amendment to its CC&Rs that if an ALJ petition is filed against the association and the association prevails, it can collect its attorneys' fees.

Mr. Ekmark emphasized the importance of understanding the economy and warned that associations must be careful more than ever before. Nearly 42% of the homeowners in Arizona do not have equity in their homes. The housing market has hit rock bottom and is starting to come back up. This is most likely due to investors who are buying homes and turning them into rentals. Therefore, associations will see more rentals within their communities.

There has been an increase in lawsuits pertaining to the failure to maintain the common areas. Mr. Ekmark emphasized the importance of relying on the advice of experts when maintaining the common areas and the importance of documenting everything.

“We have always done it that way” is not a defense.

When drafting Board resolutions, make sure they are authorized by the CC&Rs and not in conflict with them.

The Board of Directors must follow its own rules.

An association should have its legal counsel review its contracts and do not make any changes to the contract without the Board’s approval.

Check with your insurance agent to ensure that the association can choose its attorney if it gets sued. You should obtain this information every time you renew the association’s insurance coverage.

Be as consistent as possible when applying penalties and late fees. The goal of penalties is to gain compliance. If the association obtains compliance, it should waive

the penalties.

An association should know of every issue related to its annual meeting 120 days before the annual meeting.

An association can limit renters if the CC&Rs provide for it. If the CC&Rs do not provide for limitations on rentals, an association should consider amending them relating to the rentals.

If a renter is not following the association’s rules and abiding by the documents, the association can fine the owner for the violations.

Do you receive the SCOHA meeting announcements and newsletter by e-mail?

If not, e-mail Jeanne Malys, SCOHA Recording Secretary, at jeanne@ekmarklaw.com and let her know you would like to be added to the e-mailing list.

2013 Legislative Session Began January 14

It looks like it's going to be another tough battle at the State Legislature in 2013. SCOHA members need to become more active to put 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.

3. Currently, banks have first priority over an association's assessment lien. Given the currently economy, the banks are not foreclosing and so the homes sit vacant with no one paying assessments. Tell them you would support legislation that would flip an association's lien so it has first priority over the bank.

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 in this important matter.

2013 DUES PAYMENTS:

Please note that your 2013 dues must be paid by the February 26 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 Jeanne Malys at 480-922-9292 or e-mail her at jeanne@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 26, 2013 luncheon meeting of SCOHA is designated as the Annual Meeting of the Scottsdale Council of Homeowners Associations, a non-profit 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 2013 dues must be paid in full in order to attend the Annual Meeting and legal seminar.
