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SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 39th YEAR

NOVEMBER/DECEMBER 2013

Litigation Issues Affecting HOAs

Attorney Curtis Ekmark will be SCOHA's speaker at the luncheon meeting on November 19. 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 19. Please make your reservations by e-mailing jeanne@ekmarklaw.com or calling Nancy Fagan at 480-945-7098. The deadline for reservations is noon on Friday, November 15.

SCOHA ANNOUNCEMENTS

FUTURE MEETING DATES AND TOPICS:

Jan. 28 CC&R Enforcement
Feb. 25 Annual Legal Update
May 20 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.

**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
Nov.
19th
11:45 a.m.**

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

**\$15.00
Reservations
Required**

**Call Nancy Fagan at
480-945-7098 by
Friday, Nov. 15**

480-922-9292

jeanne@ekmarklaw.com • www.scottsdalehoa.com

Asphalt Maintenance for HOAs

Summary of the October 22, 2013 Meeting

Tom McDonald of PMIS, Inc. was SCOHA's guest speaker.

A pavement maintenance program is setting up a plan and budget to keep your pavement at an acceptable condition and extend its life expectancy. This is accomplished for repairing current distresses and setting a budget and plan for future repairs based on the existing condition and distresses.

In order to prepare a proper maintenance schedule, you will need the following:

- a current and accurate distress inventory,
- a detailed scope of work and specifications to attach to a request for bid, which is attached to a comprehensive contract,
- develop future maintenance applications to establish future budget reserves.

A distress inventory is a list of all existing distresses (pot holes, alligator cracking, ruts, depressions, raveling, cracking, etc), complete with measurements. The distress inventory should be current within six months for accurate bidding purposes. It is also recommended to update your distress inventory every one to two years between applications for budget adjustments. Some distresses continue to grow and this growth will affect your reserves and can radically change the scope work.

A scope of work tells the bidding contractors what type of work you are requiring. It lists all the information needed to complete the work tasks.

Specifications tell the bidding contractor how to accomplish the scope of work.

Mr. McDonald stressed that the most important forms of communication between the association and the contractor are the scope of work and the specifications.

A request for bid (RFB) or quote is issued by you to the contractor, not the contractor to you. It tells the contractors what you want accomplished, how they are going to accomplish it and assures all bidding contractors are bidding the same scope of work. Without a concise RFB, you will receive a variety of bids.

A request for bid contains the following information:

- scope of work,
- specifications,
- and all other requirements to complete the project (insurance requirements, work hours, rules and regulations).

The contract is developed when a contractor is selected. It should have the RFB attached, and commits the contractor to complete the project and the HOA to pay the contractor the agreed price when he completes all work tasks listed in the RFB. Any change orders and addendums are attached to the contract which can increase or reduce the initial contract price.

Use only a contract that has been tried and tested legally, such as AIA, ASCE, or an approved independent contract. DO NOT use a one-page contract supplied by the contractor.

Contracts should contain the scope of work, specifications, name and address of the property, names of owner and management firm (and consultant if one is used), name of contractor and all subs. It should also include the signed RFB, any plans or details, permits and anything that is unique to the project. Consideration should be given to include these additional items: method of payment, terms of payments, work hours and start/completion dates (may involve a penalty clause).

Once the project begins, Mr. McDonald emphasized that the association should always inspect the job, and the inspections should be conducted during the entire project. This will give you and the contractor time to adjust application rates and materials. Check materials during the job for compliance, such as tons of asphalt used vs calculated tons, gallons of sealer used, dilution rate of sealer, cleaning prior to installing, etc.

The inspection should be done with the contractor's knowledge.

Adverse (weather) and unique (islands in cul-de-sacs, unconfined roads, soft spots, etc.) conditions need to be taken into account to successfully complete the job.

Hiring an experienced and knowledgeable consultant can add to the quality of the project and logistics of the job. They can adjust and correct items during construction and can also verify any changes that can occur.

The closing paperwork for the project include certificates of substantial and final completion, which assures the project is completed to the scope of work and specifications, and all waivers from material suppliers, subs and general contractors should be submitted before final payment is issued.

You need to do your due diligence with inspection and observation of the work and the materials being used.

In some cases you may need independent testing. Keep track of the amount of materials being used by collecting weigh tickets, bills of lading, supplier

certificates of compliance and other documentation.

You need to obtain certificates of substantial and final completion to assure the tasks listed in the scope of work are accomplished to specifications.

When completed, make sure you have all waivers of liens from all suppliers, subcontractors and the main contractor.

All these documents should be in your possession before you release any payments.

Payments must be issued according to contract. If progress payments are scheduled, then each must be paid as stipulated after the contractor completes the required tasks. These types of payments are usually issued to cover material costs on large projects that cover a lengthy period of time. Payments cannot be withheld for perceived or legitimate deficiencies.

Notice can be given notifying the contractor of any claims that need to be charged back to the contractor either by demand or arbitration.

Final payment (retention according to contract) can be withheld until punch list items are completed according to contract.

Arizona law states that the contractor needs to be paid according to the contract. Violation of the payment can be grounds for lawsuits for breach of contract. You do have 15 days to notify the contractor in writing if any funds need to be withheld for property damages only. All other claims must go to arbitration which will include costs for arbitration.



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. Over the years, the legislature has 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

Curtis S. Ekmark

President
