



SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 40th YEAR

FEBRUARY 2014

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

SCOHA ANNOUNCEMENTS

FUTURE MEETING DATES AND TOPICS:

Mar. 25 Board Meetings
Apr. 22 Amending Documents
May 20 Legislative Update

FREE HOA MANUAL:

Curtis Ekmark will be distributing Ekmark & Ekmark's "Homeowners Association Manual" at the February 25 meeting. It contains an HOA Handbook, a guide on the laws governing HOAs, as well as the Arizona statutes affecting HOAs.

Annual Legal Seminar to Address Pertinent Legal Issues

Attorney Curtis Ekmark, SCOHA's President, will discuss important legal issues facing homeowners associations by highlighting the HOA cases around the country. Most importantly, he will address your questions at SCOHA's annual legal seminar on Tuesday, February 25 at noon.

This meeting fills up quickly each year, so please make your reservations as soon as possible. Call Jeanne Malys at 480-922-9292 or send an e-mail to jeanne@ekmarklaw.com by 2:00 p.m. on Friday, February 21 to make your reservation.

PLEASE NOTE: YOUR 2014 DUES MUST BE PAID BY FEBRUARY 25 IN ORDER TO ATTEND THIS MEETING. PLEASE CALL JEANNE MALYS AT 480-922-9292 IF YOU HAVE A QUESTION REGARDING YOUR DUES PAYMENT.

**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
February
25th
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, February 21**

480-922-9292

jeanne@ekmarklaw.com • www.scottsdalehoa.com

CC&R Enforcement

Summary of the January 28, 2014 Meeting

Attorney Adrienne Speas, with the law firm of Ekmark & Ekmark, was our guest speaker.

The purpose of enforcement is to make your communities better.

A key step to enforcement is to determine if the association has a right or a duty to enforce its documents. This can be determined by the governing documents, usually the CC&Rs.

In an Arizona case, the court did not want to entertain an enforcement lawsuit if there was no harm to the community. Therefore, you need to evaluate the violation and determine if there is harm to the community. In other words, the board has to act in the best interest of the association as a whole. The key is to balance what the documents say with whether there is a harm to the community.

What does an association enforce? It enforces the CC&Rs, the statutes, the rules, and the architectural guidelines.

There could be provisions in your CC&Rs that may no longer be valid because new laws have been enacted that overrule the CC&Rs. Keep up-to-date on all new legislation. For example, legislation introduced a few years ago indicates the procedure to follow if a homeowner sends a written request for information on the violation.

You also need to ensure that the rules and regulations are proposed properly. For example, the association's CC&Rs may indicate that the association has the right to adopt rules and regulations related to the common areas and related to the conduct of the members. If your

documents indicate this, you cannot draft a rule that gives the association the ability to remove something from an owner's lot. However, if your association has an architectural review procedure, you might be able to require owners to submit applications for items to be placed on their lots. Again, reviewing the governing documents is very important.

Regarding methods of enforcement, sending a letter is enforcement. This may include courtesy letters the association sends to the violating owner. If the violation involves the condition of the owner's property, by statutory law, the owner can send a certified letter back to the association within ten days saying that the owner contests the violation. The association must provide the provision of the documents that has been violated, the date the violation was observed and the first and last name of the person who observed the violation. Ms. Speas suggests that this information be included in the courtesy notification letters so that it is provided from the beginning of the enforcement process.

In addition, if the association intends to consider fining for the violation, it must give the owner notice and an opportunity to be heard before fining. This may also be included in the courtesy notification letters. Also, associations don't have a lien on the owner's property if they assess fines. Fines may be collected if the association obtains a court judgment for the fines and then follows the typical judgment collection process; the association cannot foreclose on a judgment for fines.

Many associations send out courtesy notification letters to attempt to achieve compliance. If these letters do not work, you

may want to consider having the association's attorney send the letter to the violating owner. Many times, this results in compliance.

Association's also must review their governing documents to determine if the attorneys' fees incurred with enforcement can be posted to the violating owner's ledger and/or collected if the association is the prevailing party in a suit. If the documents do not give the association the authority to post enforcement attorneys' fees to the ledger, the association may not do so. Many documents allow an association to collect its attorneys' fees if it is the prevailing party in an enforcement lawsuit.

Self-help, fines and injunctive relief are the main methods of enforcement. In order to use these methods, you need to carefully review your documents to determine if you have the authority for these enforcement methods and the procedures to follow.

Be careful with self-help. There is no state statute giving associations the authority to perform self-help - authority must be provided in the CC&Rs.

Tips for gathering evidence for the violation include taking a lot of date-stamped photographs and documenting the violation in detail for the file.

Once an owner receives notification of a violation, he or she will typically claim some common defenses, such as waiver/abandonment, establishment of precedent, oral approval or deemed approval. The association can usually counter these defenses.

Ms. Speas then summarized tips and common mistakes associations make with enforcement:

- Sticking with enforcement as a matter of principle. Sometimes it is best to set principle aside and make a decision that is best for the association as a whole.
- Not having evidence. Again take date-stamped photographs and obtain written complaints/ observations from those who have observed the violation.
- Not budgeting for enforcement. When owners know the association has no money for enforcement, they will take advantage of that situation.
- Tell the attorney the whole story so the attorney can help the association prepare its case.

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.

Protocol for Board Meetings

The Board of Directors was elected by the members to carry on the business of the association. As such, the Board should hold meetings in the most efficient and effective manner possible, to help the association function smoothly. To that end, the Board may want to consider adopting the following protocol for how Board meetings are to be conducted.

1. The Board will go through the agenda for the meeting. Agendas will be available for members to review during the meeting.
2. For each action that is to be voted upon, a Board member will make a motion, which must be seconded by another Board member before discussion takes place.
3. Once the motion has been made and seconded, the Board will discuss the matter that is up for vote.
4. After the Board has had an opportunity to discuss the matter, the Board will allow members to speak on the matter. The Board may limit the time allowed for members to speak, and may limit the number of members speaking on the matter.
5. Once members have been allowed to speak on the matter, the Board will determine if it needs any further discussion on the matter. If so, the Board will discuss the matter again prior to taking a vote. If not, the Board will vote on the matter.
6. All members shall treat each other, and the Board in general, with courtesy and respect. No harsh words, yelling, arguing, abusive language, finger pointing, or swearing will be allowed at any time.
7. Once the Board has gone through all agenda items, the Board will open up the meeting to allow members to speak on any other topic of concern to them (again, potentially subject to time limits, and subject to the time period allowed for the Board meeting).

2014 DUES PAYMENTS:

Please note that your 2014 dues must be paid by the February 25 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.
