



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

SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS  
**SCOHA NEWSLETTER**

IN OUR 41st YEAR

JANUARY 2015

## **Holding Legal and Effective Annual Meetings**

The annual meeting is a crucial event. This may be your only contact with many members of the community. From a practical perspective, you can build a sense of pride within the community by making this event a community celebration. From a legal perspective, you must know the answers to many questions before holding an annual meeting.

Attorney Lynn Krupnik will be our guest speaker on January 27 at 11:45 a.m. She will cover the many aspects of running an effective annual meeting.

Ms. Krupnik is an attorney with Ekmark & Ekmark where she practices exclusively in the area of community association law and has assisted many associations with fair housing issues. She graduated first in her class from Arizona State University College of Law, where she was named outstanding law school graduate. Ms. Krupnik is a member of the College of Community Association Lawyers, has taught as an adjunct professor on legal issues and has been involved in drafting and reviewing proposed legislation for community associations.

We hope you can attend January 27 at 11:45 a.m. Reservations must be made in advance, so please make your reservations by calling Nancy Fagan at 480-945-7098 by noon on Friday, January 23 or sending an e-mail to [jeanne@ekmarklaw.com](mailto:jeanne@ekmarklaw.com) and provide your name and association.

### **SCOHA ANNOUNCEMENTS**

#### **FUTURE MEETING DATES AND TOPICS:**

Feb. 24 Annual Legal Seminar  
Mar. 24 Collection Landmines  
May 19 Legislative Update

#### **SCOHA's WEB SITE:**

Don't forget to check our web site!

SCOHA's web site address is  
[www.scottsdalehoa.com](http://www.scottsdalehoa.com).

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

**SCOHA  
DATA TO  
REMEMBER:**

**Tuesday,  
January  
27th  
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, January 23**

**480-922-9292**

**[jeanne@ekmarklaw.com](mailto:jeanne@ekmarklaw.com) • [www.scottsdalehoa.com](http://www.scottsdalehoa.com)**

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# Litigation Issues Facing Associations

## Summary of the November 18, 2014 Meeting

SCOHA President, Curtis Ekmark, provided his update on current litigation issues facing associations.

There are several things associations can focus on that will either help avoid litigation or make it easier to defend associations to attempt to resolve the case quickly:

1. Review the Governing Documents. Specifically focus on the insurance requirements – an association needs to know if it is properly insured today, not when it is being sued. An association should be able to select its own attorney when defending a lawsuit. Check your policy to see if you can select your attorney or if your insurance provider will be selecting your attorney. You don't want to be insured by a provider that selects an attorney that is not familiar with HOA law.

2. Consider Spending Money on Experts When Needed. The Nonprofit Corporation Act offers protection for board members who hire experts and rely on their advice or opinions. For example, in a case involving solar panels installed on a second-story balcony extension, the association hired an expert to inspect the panels and issue a report. Under Arizona law, an association cannot deny installation of solar panels outright. The expert indicated that the panels did not have to be placed on the second story, which was the issue; the performance of the panels would not be diminished if they had been installed on the first floor, thus hiding the panels from view of neighboring properties and accomplishing their purpose for the owners. Because of spending money on this expert, the association will probably win this case in court.

3. Read Your Contracts. Before entering into a contract, it is vitally important to read and understand all of the provisions, especially the termination and indemnification clauses. Don't hesitate to have your association's attorney review contracts.

4. Communicate All Architectural Decisions in Writing. Many litigation issues arise from architectural submissions/non-submissions. When dealing with an owner and/or his/her representative in an architectural issue, be sure to put everything in writing. Do not provide verbal approvals or denials.

5. There is a Difference Between Believing Something and Proving It. Online research can provide quite a bit of information regarding owners' claims that they are or are not doing something that might be considered a nuisance. This is usually the case with short-term rentals. If your association documents prohibit or limit short-term rentals, you can usually collect evidence/information online from sites such as VRBO that would help the association prove the owner is renting out the home as a short-term rental. Documentation is very important.

6. Focus on Keeping Accurate, Complete Records. For example, accurate records play a big part in determining whether an amendment passed or did not pass. Same thing for annual meetings. Each year before the annual meeting, the association needs to be answering a series of questions at least 120 days before the meeting in order to ensure that the meeting was legal and run effectively.

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7. Tell Your Attorney the Whole Story. If there is a problem, the attorney might be able to fix it if he or she knows everything. It's very important to provide all this information to your attorney before filing suit.

8. Follow the Association's Documents and Rules When Enforcing the Documents. If you are going to enforce the association's documents, you need to ensure the association is following its own documents and rules. The best rules are those that are simple to understand. If possible, drafting and distributing design guidelines also proves to be very helpful with enforcement.

9. Be Careful About Conditional Approvals. Conditional approvals are usually not drafted properly and can leave the door open for owners to take advantage of the poor drafting.

10. If an Owner Has Submitted a Complicated Architectural Plan, Consider Hiring an Architectural Expert. Check your documents – they might give the association the ability to pass the cost of the expert on to the owner as part of the architectural review process.

11. Don't Wait Too Long to File Suit. If you wait too long, you may lose your ability to file suit.

12. Watch Out For Contractors Who Claim They Can Get Your Property Damage Fixed For Free. If you've suffered property damage and a contractor comes to you and says he will work with the association's insurance carrier to obtain the insurance proceeds to pay for the damage and will do the work at no cost to the association, don't believe him. This type of contract is illegal and unenforceable.

13. Understand Maintenance Responsibility. Especially in condominiums, it's important for an association to understand its maintenance responsibilities compared to those of the owners'. It's best to understand this now, as opposed to waiting until a water leak has caused damage.

Mr. Ekmark explained that his office is seeing an increase in the number of lawsuits filed against associations. It's now more important than ever to make sure your association is following its governing documents, maintaining complete and accurate records and communicating effectively with owners and attorneys.

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](mailto:jeanne@ekmarklaw.com) and let her know you would like to be added to the e-mailing list.

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# 2015 Legislative Session Began January 12

It looks like it's going to be another battle at the State Legislature in 2015. 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!

## **2015 DUES PAYMENTS:**

Please note that your 2015 dues must be paid by the February 24 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](mailto: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 24, 2015 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 2015 dues must be paid in full in order to attend the Annual Meeting and legal seminar.

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