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SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 38th YEAR

SEPTEMBER 2012

Trends in HOA Collections

Trends in HOA Collections will focus on areas such as short sales, recovery of past due assessments from a deceased owner, the impact of reverse mortgages on community associations, new trends in bankruptcy filings, and what happens when a debtor challenges a bank or wage garnishment. Bring your questions as well.

Penny Koepke, with the law firm of Ekmark & Ekmark, will be our guest speaker. Ms. Koepke graduated *summa cum laude* with a Bachelor of Science degree in Justice Studies from Arizona State University in 1990 and received her J.D. at Pepperdine University School of Law in 1993, where she graduated *8th in her class of 239* and served as an editor of the Pepperdine Law Review. Ms. Koepke focuses her area of practice on the assessment recovery and enforcement of restrictive covenants. She regularly lectures at industry- and municipality-sponsored seminars, has testified at the Arizona Legislature on bills affecting the community association industry, and is actively involved with the Community Associations Institute and Arizona Association of Community Managers.

Please make your reservations as soon as possible, and please note that we must have a reservation to guarantee a lunch and a seat at the meeting. We apologize, but we are not able to accept reservations after Saturday, September 22.

Call Nancy Fagan at 480-945-7098 by noon on Friday, September 21 for reservations or e-mail your reservation to jeanne@ekmarklaw.com.

SCOHA ANNOUNCEMENTS

FUTURE MEETING DATES AND TOPICS:

Oct. 23 City of Scottsdale

Nov. 27 Litigation Issues

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,
Sept.
25th
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, Sept. 21**

480-922-9292

jeanne@ekmarklaw.com • www.scottsdalehoa.com

2012 Legislative Update

Summary of the May 22, 2012 Meeting

During this year's session, the Legislature passed two new laws pertaining to homeowners associations. They became effective August 2, 2012.

HB 2471 – Conflicting Enactments Regarding Political and Real Estate Signs

This new law reconciles the conflicting enactments relating to real estate and political signs passed last year by the legislature. This new legislation amends both the Planned Community Act (A.R.S. § 33-1808) and the Condominium Act (A.R.S. § 33-1261).

Political Signs (Planned Communities Only).

Under the new law, an association may prohibit the display of political signs earlier than seventy-one (71) days before the day of an election and later than three (3) days after an election day. Also, if the city, town or county in which the property is located does not regulate the size and number of political signs on residential property, an association may not limit the number of political signs, except that the maximum aggregate total dimensions of all political signs on a member's property shall not exceed nine (9) square feet.

Political Signs (Planned Communities and Condominiums). The new law clarifies that associations may not require political signs to be commercially produced or professionally manufactured.

Real Estate Signs (Planned Communities and Condominiums). The new law further clarifies that, for both condominiums and planned communities, an association may not prohibit or charge a fee for the use of, placement of, or the indoor or outdoor display of a for sale, for rent or for lease sign and a sign rider by an association member on that member's property in any combination. Also, an association may not prohibit real estate signs in any other way than as is specifically authorized by A.R.S. § 33-1261 (for condominiums) or A.R.S. § 33-1808 (for

planned communities). However, an association may prohibit the use of real estate signs that are not commercially produced. Finally, please note that the new law retains the 6 month lien forfeiture penalty for any association or managing agent that violates real estate sign law.

SB 1476 – Transfer Fees; Architectural Committee Composition, Security Deposits, Construction Review Process

While the portions of the new law pertaining to transfer fees will apply to both condominiums (A.R.S. § 33-1260) and planned communities (A.R.S. § 33-1806), the remainder of the law applies only to planned communities (adds A.R.S. § 33-1817). This new law contains the following provisions:

1. With respect to both condominiums and planned communities, the new law clarifies that an association may not charge a fee for resale disclosure or other administrative services related to the transfer to an escrow agent.
2. With respect to planned communities, SB 1476 sets forth new guidelines for architectural committee composition, architectural security deposits, and the construction review process. These guidelines will apply regardless of the provisions in an association's governing documents. The specific requirements are as follows:

Committee Composition:

The members of any design review committee or architectural committee must include at least one member of the association's Board of Directors, who must be the committee's chairperson.

Security Deposits:

- For new construction of the main residence or for rebuilds of the main residence, if an association has: (i) enacted architectural guidelines; (ii) the governing documents allow the association to charge a security deposit; and (iii) if a member is required to provide a security deposit to secure completion of their construction project in compliance with approved plans, then:
 - o The deposit must be placed into a trust account.
 - o The cost of the trust account must be equally shared between the member and the association.
 - o Any interest on the deposit shall become part of the deposit.
 - o If the construction project is abandoned, then the association's Board may determine the appropriate use of the deposit. Abandonment is likely best determined by waiting the 180 days detailed below for the construction review process. Any approval also should state the start and end date to the project to help show abandonment.
- While these provisions only strictly apply to the types of projects listed, the best practice in some cases may be to enact a uniform policy and handle all security deposits in this manner going forward. We suggest you contact legal counsel to discuss your specific design review process.

Construction Review Process:

- For new construction of the main residence or for rebuilds of the main residence:
 - o The association or the design review committee must hold a final design approval meeting for the purpose of approving the plans, and the member or their agent must be allowed to attend this meeting.
 - o If the plans are approved, then the association or design review committee must provide written acknowledgement that the approved plans, along with any approved amendments to the plans, are in compliance with all applicable rules and guidelines, and that the refund of the security deposit requires completion of construction in accordance with the approved plans.
 - o The association must conduct at least two on-site formal reviews during construction to determine compliance with the approved plans. The member or their representative must be allowed to attend these reviews.
 - o The association must issue a written report specifying any deficiencies, violations or unapproved variations from the approved plans within five business days of the formal review.
 - o Within 30 days after the second formal review, the association must provide the member the written report specifying any deficiencies, violations or unapproved variations from the approved plans. If the written report does not specify any of such items, then the association shall promptly release the security deposit to the member.
 - o **Note:** This last provision is poorly drafted and does not mesh well with the prior requirement to hold at least two on-site reviews and issue reports for those reviews within five business days. Therefore, we suggest that the second on-site review be held as close to the end of a construction project as possible, with the report being issued within five business days to help ensure compliance.
 - o If there are identified problems, then the association may hold the security deposit, if any, for 180 days or until receipt of a subsequent report of construction compliance, whichever is less.
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If a report of construction compliance is received before 180 days elapses, then the security deposit must be promptly released to the member.

- Note:** The drafting of this provision is unclear and confusing. We suggest that an association ask the member for notice of when they have addressed the identified problems so that the association can perform an additional inspection and prepare a new report to recognize compliance within the 180-day time period.
- o If no such report is received within 180 days, then the association must release

the security deposit from the trust account to the association.

- o The association may decide to release all or any part of the security deposit to the member before receiving a compliance report. Any such release is not a representation that the construction complies with approved plans.
- The statute confirms that approval of the plans and approval of construction (or a rebuild) of a main residential structure by the association does not constitute a representation or warranty that the plans or construction comply with applicable governmental requirements or engineering or safety standards.

Do you receive the SCOHA meeting announcements, newsletters and legislative Action Alerts 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.

A bonus for being on the e-mailing list is that you will receive an HOA Tip by e-mail on a regular basis.
