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SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS  
**SCOHA NEWSLETTER**

IN OUR 39th YEAR

FEBRUARY 2013

## **Annual Legal Seminar to Address Pertinent Legal Issues**

Attorney Curtis Ekmark, SCOHA's President, will discuss important legal issues facing homeowners associations. Most importantly, he will address your questions at SCOHA's annual legal seminar on Tuesday, February 26 at noon.

Curtis Ekmark has practiced in the area of homeowners association law for over 18 years. He frequently lectures and speaks on association issues and has won several significant cases in this area. Mr. Ekmark earned his undergraduate degree from Marquette University and received an academic scholarship to attend Pepperdine University School of Law. At Pepperdine, he was a member of the Law Review and the Phi Delta Phi legal honors fraternity and was named the Terry Giles Scholar and the Odell McConnell Scholar before graduating with honors. Prior to graduation, he served as a legal intern for Judge John L. Coffey on the United States Court of Appeals for the Seventh Circuit in Chicago. Mr. Ekmark frequently lectures on association issues, writes articles for local publications, and has appeared on various radio and television newscasts and programs.

This meeting fills up quickly each year, so please make your reservations as soon as possible. Call Nancy Fagan at 480-945-7098 by noon on Friday, February 22 or send an e-mail to [jeanne@ekmarklaw.com](mailto:jeanne@ekmarklaw.com) to make your reservation.

PLEASE NOTE: YOUR 2013 DUES MUST BE PAID BY FEBRUARY 26 IN ORDER TO ATTEND THIS MEETING. PLEASE CALL JEANNE MALYS AT 480-922-9292 IF YOU HAVE A QUESTION REGARDING YOUR DUES PAYMENT.

### **SCOHA ANNOUNCEMENTS**

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

Mar. 26 Landscaping  
Apr. 23 Rentals in HOAs  
May 21 Legislative Update

#### **FREE HOA MANUAL:**

Curtis Ekmark will be distributing Ekmark & Ekmark's "Homeowners Association Manual" at the February 26 meeting. It contains an HOA Handbook, a guide on the laws governing HOAs, as well as the Arizona statutes affecting HOAs.

**SCOHA  
DATA TO  
REMEMBER:**

**Tuesday,  
February  
26th  
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, February 22**

**480-922-9292**

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

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# HOA Insurance Claims From Start to Finish

## Summary of the January 29, 2013 Meeting

SCOHA's guest speaker was Adrienne Speas of Ekmark & Ekmark.

Before any insurance claim or loss, you should know your policies. There are different kinds of insurance policies, such as general liability, personal injury, medical payments, directors and officers, fidelity and workers' compensation.

Keeping updated contact information for homeowners will aid in the communication and claim process.

Review your governing documents and the law to know your right to access the unit in case of an emergency. Under the Condominium Act, an association has the right to go into a unit in an emergency. If the association is a planned community, it needs to review the governing documents to determine this right.

Know what the association is responsible for insuring and then compare that to the insurance coverage.

Develop a list of preferred vendors to contact when a loss occurs.

Take steps to limit or prevent property/casualty claims by doing regular inspections and maintenance or repairs of the areas that are the association's responsibility. An association should also consider adopting rules to help limit water leaks in units. For instance, an appropriate rule might be one in which the owners are instructed to turn off the water for their unit (if

each unit has its own shut-off valve) when they leave for an extended period of time. You may also consider developing steps to take to prevent water leaks and communicate this information to the owners on a regular basis.

To limit or prevent general liability claims, ensure the common areas or elements are kept in a reasonably safe condition. In Arizona, courts have ruled that an association has a duty to keep its common areas safe. You may want to consider posting appropriate warnings or signs throughout the common areas or elements and adopting rules for safety. Be careful when adopting rules. For instance, unless the association is age-restricted, you must be careful about targeting children or other protected classes. Make sure adopted rules are legitimate safety rules.

To limit or prevent directors and officers or other liability claims, review the governing documents at least once a year. Get board training and/or continuing education on a regular basis.

### **Steps to Take Immediately After Property Damage:**

- If appropriate, call the police to report the situation or request emergency services. A police report may be helpful with the claim.
  - Call contractors to come to the property to stop the damage and prevent further damage.
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- Contact the insurance agent to make a claim.
  - Contact the property owners as necessary.
  - Take photos and video of the damage and surrounding areas. Make a record of what was damaged. Date stamping the photos and video is also important.

#### **Things to Avoid Immediately After Property Damage Occurs:**

- Making any promises or commitments to what will be covered by insurance. Instead, describe the steps that will be taken to get things resolved.
- Offering to pay for hotels or lodging or to replace personal property. This will probably not be covered by the association's insurance but may be covered by the owner's policy.

#### **Steps to Take Immediately After an Accident on the Common Areas or Common Elements:**

- Get names and contact information for potential witnesses.
- Let the insurance company know what has happened. Most policies will provide medical coverage without even determining who was at fault.

#### **Steps to Take Immediately After a Demand for Payment or a Claim of Liability:**

- Contact the association's attorney.
- Put the insurance carrier on notice of a potential claim.
- Preserve and collect documentation regarding the underlying issue. The association has a duty to preserve this documentation and nothing must be destroyed.

#### **What to do While a Claim is Being Processed:**

- Be sure to cooperate with the adjuster, and don't withhold information from the adjuster or your attorney.
  - Be sure to avoid communicating with owners not on the board of directors regarding the issue. If questioned about the issue, indicate that the insurance carrier has been contacted and the association is working with its attorney.
  - Be sure to avoid communicating with the party who filed the claim.
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### **After Receipt of Insurance Proceeds for Property Damage:**

- Contract with a licensed, bonded contractor for the repairs.
- Keep the owners involved and updated. The owners may assume that the check will be given to them and they will handle the repairs. If it is the association's property, the association will make the repairs using the insurance proceeds.
- Check in with the contractor frequently.

### **After the Claim is Resolved and Repairs are Completed:**

- Evaluate whether the association is carrying too much or not enough insurance.
- Evaluate whether the association wishes to remain with the current insurer.
- Evaluate whether the association needs to make any changes in policies, practices or procedures. Do you need to adopt maintenance policies? Do you want to consider amending the CC&Rs?

### **2013 LEGISLATIVE UPDATES:**

The Legislative Update page is up and running for the 2013 session. So far, we've got 11 HOA-related bills we're monitoring. To access the Update, go to SCOHA's web site at [www.scottsdalehoa.com](http://www.scottsdalehoa.com) and click on the "Click Here" link in the lower right under Legislation Alert.

### **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](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.

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