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SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS
SCOHA NEWSLETTER

IN OUR 40th YEAR

APRIL 2014

Amending Governing Documents: Tips to Consider and Pitfalls to Avoid

SCOHA ANNOUNCEMENTS

FUTURE MEETING DATES AND TOPICS:

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.

Looking to amend your governing documents? Wondering whether you need to amend your governing documents? Do you know which documents need to be amended? Are you wondering what the process is, and what hoops you need to jump through?

At our next meeting on April 22, attorney Adrienne Speas will discuss when amendments need to be made, which documents need to be amended, the process for amending, and the legal requirements and restrictions when amending.

Lunch begins at 11:45 a.m. and the program begins at noon. Please make your reservations by calling Nancy Fagan at 480-945-7098 or sending an e-mail to jeanne@ekmarklaw.com by 2:00 p.m. on Friday, April 18 to make your reservation.

**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
April
22nd
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, April 18**

480-922-9292

jeanne@ekmarklaw.com • www.scottsdalehoa.com

Fair Housing Update/New Definition of “Pets”

Summary of the March 25, 2014 Meeting

Attorneys Eric Boyd and Nicole Miller of Ekmark & Ekmark were SCOHA’s guest speakers.

Anyone who resides in a community can bring a fair housing action against the association. Many of these actions increasingly involve assistance animals. Due to fair housing statutes, there may be situations in which an owner or resident may be entitled to an assistance animal in violation of the association’s governing documents. For instance, if an association discovers that a resident has a dog in violation of the documents (over a 25-pound restriction, for example), and the resident indicates that the dog is needed because of his disability, the association should obtain certain information before proceeding with enforcement.

An association can ask if the person has a disability and if the person has a disability-related need for an assistance animal. However, Mr. Boyd cautioned that the association can only go so far in challenging a person’s disability. The more it challenges it, the more potential liability for the association. If there is an obvious disability, the association cannot ask questions about the disability.

If the person’s disability is not obvious, the association can ask questions about whether the medical provider has sufficient basis of knowledge regarding the person’s condition, and it can request confirmation that the person is disabled and that major life activities are impaired.

The association can ask the person’s healthcare provider for an explanation of why the animal is necessary to address the disability. Such documentation is sufficient if it shows that the animal will provide some kind of disability-related assistance or emotional support. You cannot require evidence of individual training or certification for the assistance animal.

It’s important to note that dogs are the most common, but other animals can be assistance animals. Assistance animals are not pets, so they are not subject to pet deposits, caps on number of pets, breed or size restrictions, etc. The assistance animals are permitted to go anywhere the person is allowed to go unless it is an undue burden or fundamentally alters services.

A person’s request for an accommodation can be denied by the association if the assistance animal poses a threat to health or safety or it would cause substantial physical damage to the property of others. This analysis must be based on objective evidence of actual conduct, not on speculation or fear.

If the association grants an accommodation for the assistance animal, it should send a letter to the owner and tenant (if applicable) and a copy placed in the lot/unit file. It’s also important to keep the information pertaining to the accommodation confidential. If the association is asked why the owner/resident is allowed to have an animal in violation of the documents, the association should simply say that the accommodation is allowed as an assistance animal under FHA laws. The owner of the assistance animal must still comply with other rules and ordinances regarding animals.

Mr. Boyd made an important point that fair housing damages are not covered under association insurance coverage. Many policies will cover the association if a fair housing action is filed against the association, but if it’s found that the association was responsible for fair housing damages, the insurance policy will not cover the amount of damages. Because of this, fair housing complaints are very serious issues.

A few examples of how associations can get into trouble relating to fair housing were

highlighted: Keep in mind that e-mails are discoverable evidence. So if the board members are sending e-mails complaining about the disabled person, this could get the association in a lot of trouble. An association can also get into trouble if it just outright denies the person's request for a reasonable accommodation. If the association continues to move forward with enforcement once someone raises the disability issue, the association will be in violation of the fair housing act.

Outside of the fair housing issues, since associations seem to be encountering an increase in the different types of animals claimed as "pets," what can an association do to determine whether an animal is a pet? Ms. Miller stated that the first step would be to check the governing documents. Many documents state that owners may have "common household pets" or "generally recognized house or yard pets." If these terms are not defined in the governing documents, courts will look to the ordinary meaning of the term. That may mean referring to the dictionary, which defines a pet as "a domesticated animal kept for pleasure rather than utility."

Arizona courts have not set forth factors to determine animals kept for pleasure or utility, but there was a case in North Carolina that addressed the issue directly. Fred and Barney are pygmy goats that were purchased as "comfort pets." They are males, so they have no commercial or utilitarian purpose. The goats know their names and come when called and follow the family around to be petted. They also retrieve balls and grooming brushes. Although the goats are kept outside, Fred and Barney have their own "dog house," and the owner brings out blankets and coats when the weather is cold. The mother in the family testified that her bond with Fred and Barney is as strong or stronger than the bond she has with the other family pets. The mother also testified that she was undergoing chemotherapy and the goats had been a comfort to her.

Based on these factors, as well as the association's governing documents not limiting the term "household pets" to specific animals, the court determined that Fred and Barney were kept for pleasure and not utility and were therefore considered pets.

Here in Arizona, some documents authorize the board to determine what animal constitutes a pet in its "sole and absolute discretion." But even with that, it is helpful for the board to consider factors that have been used to determine whether an animal is a pet. These factors may include the following:

- Does the animal have a commercial or utilitarian purpose?
- Does the animal have a name and does it come when called by that name?
- Is the animal treated like a family's pet and interacts with the family like it is a pet?
- Is the animal walked on a leash?
- Does it sit in family members' laps?

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.

- Does it follow the family around to be petted?
- Does it retrieve toys?
- Is there a strong bond between the animal and the family?
- Does the animal live inside the home or outside? If outside, does it have its own, special space?
- Is the animal making someone feel better who is sick and undergoing treatment?

Even applying these factors may not make it completely clear whether an animal is considered

a pet. The safest way to ensure certain animals are not permitted as pets under the CC&Rs is to amend the CC&Rs.

Even if the association decides an animal is a pet under the governing documents, it may still be a nuisance. Have there been noise complaints? How about smell complaints? Is the animal off leash? Is the owner not picking up after the animal? These issues may be considered nuisances. To help solidify this nuisance evidence, the association's case may be stronger if a person witnessing the nuisance is willing to testify in court. The evidence must be factually intense, and the judge will apply a "reasonableness" standard.

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