SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS

SCOHA NEWSLETTER

IN OUR 40th YEAR SEPTEMBER 2014

non-profit corporation organized under the laws of Arizona

Scottsdale's Mayor to Speak at September 23 Luncheon

We're looking forward to our next meeting: Mayor Jim Lane will be SCOHA's speaker at noon on September 23. He'll provide an update on all things Scottsdale, and you'll have an opportunity to ask him questions about our city.

Mayor W. J. "Jim" Lane served for four years on the Scottsdale City Council beginning in June 2004, and began his first term as Mayor in January 2009.

Mayor Lane currently represents the city as a member of the Flinn Foundation Arizona Bioscience Roadmap Steering Committee. He is the immediate past president and a member of the Arizona Municipal Water Users Association, a member of the Executive Committee of the League of Arizona Cities and Towns, and a member of the Maricopa Association of Governments Executive Committee, Regional Council, Chair of the Transportation Policy Committee, and Economic Development Committee. Mayor Lane also serves on the Scottsdale Leadership Advisory Board.

We're offering a 2-for-1 special for this lunch meeting. Bring a friend and you can both attend for the price of one for $15!

Call Nancy Fagan at 480-945-7098 by 5:00 p.m. on Friday, September 19 for reservations or e-mail your reservation to jeanne@ekmarklaw.com.

SCOHA ANNOUNCEMENTS

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. 23rd 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. 19

480-922-9292

jeanne@ekmarklaw.com • www.scottsdalehoa.com

Legislative Update 2014

Summary of the May 20, 2014 Meeting

The Legislature passed several new laws pertaining to homeowners associations. They became effective July 24, 2014, except for HB 2021, which will become effective on December 31, 2014.

HB 2021: Vexatious Litigants

This new law adds A.R.S. § 12-3201. It allows a Superior Court judge to designate a pro se (unrepresented litigant) as a vexatious litigant. Once designated as vexatious, the pro se litigant may not file any new pleading, motion, or other document without prior permission from the court. The new law establishes that only the most serious offenders may be designated as vexatious. A pro se litigant must engage in vexatious conduct, which is: 1) repeated filings for sole or primary purpose of harassment; 2) unreasonable expansion of court proceedings; 3) bringing or defending cases without substantial justification; 4) abusing the discovery process; 5) a pattern of unreasonable, repetitive and excessive requests for information; or 6) filing duplicative documents on which the Court has already ruled. This new law goes into effect on December 31, 2014.

HB 2027: Golf Carts; Neighborhood Electric Vehicles

This law adds subsection C to A.R.S. § 28-721 and applies to age restricted communities in unincorporated areas of a county with a population of more than three million persons. It allows a person to drive a golf cart or neighborhood electric vehicle on a paved shoulder or, where there is no paved shoulder, as close as possible to the right-hand curb or right-hand roadway edge.

This law also adds language to subsection 1 of A.R.S. § 28-723. It allows the driver of a vehicle to pass a golf cart or neighborhood electric vehicle on the left even when the driver's vehicle shares a lane with the golf cart or neighborhood electric vehicle. This exception to the prohibition on passing while sharing a lane applies to golf cart or neighborhood electric vehicles only.

This law also adds A.R.S. § 28-777. It requires a person driving a golf cart or neighborhood electric vehicle on a paved shoulder, close to the right-hand curb, or close to the right-hand roadway edge (i.e., in a manner consistent with A.R.S. § 28-721(C)) to yield the right-of-way to a vehicle traveling in the same direction that intends to turn right.

HB 2141: County Assessor; Common Area; Consolidation

This new law adds Subsection D to A.R.S. § 42-13404 and requires the county assessor to automatically consolidate parcel numbers that are located within the same tax district. The association still has to submit the parcel(s) for common area valuation, so the association should check with our office to ensure that all applicable parcel numbers are submitted and that the assessor properly values such parcels.

HB 2477: Homeowners Associations; Transfer Fees; Exemption

This bill amends the resale disclosure statutes for planned communities (A.R.S. § 33-1806) and condominiums (A.R.S. § 33-1260). The amendment exempts owners and associations from providing the resale disclosure information required by statute if the transfer is:

1. A conveyance by recorded deed; and

2. The deed bears an exemption listed in A.R.S. § 11-1134(B)(3) (which covers transfers for only nominal actual consideration between family members) or (B)(7) (which covers transfers for no consideration or nominal consideration between companies or entities with common ties).

The new law further provides on recordation of the deed, and for no additional charge, the member shall provide the association with the changes in ownership including the member's name, billing address and phone number. However, failure to provide the information shall not prevent the member from qualifying for the exemption above.

Finally, it is worth noting that this amendment does not change the existing exemptions to the resale disclosure statute. Specifically, resale disclosure information is not required if the transfer is a sale to a purchaser in which a subdivision public report is issued pursuant to A.R.S. § 32-2183 or a timeshare public report is issued pursuant to § 32-2197.02. Also exempt are sales pursuant to A.R.S. § 32-2181.02, which, among other things, exempts the sale of six or more lots or parcels to one buyer in one transaction.

SB 1184: Planned Communities; Definition; Property Easements

This new law amends A.R.S. § 33-1802 and expands the definition of "planned community" to include real estate on which an easement to maintain roadways or a covenant to maintain roadways is held by a nonprofit corporation or unincorporated association of owners. This does not apply to condominiums. Under this new law, it is no longer necessary for a planned community to own common area. A planned community now includes a homeowners association that is obligated to maintain the roadways in the community if the roadways are easements over property that is 1) not common elements; and 2) not owned by the homeowners association. In order to be considered a planned community, other existing criteria must still be met (the association is created for the purpose of managing, maintaining or improving the property, lot owners are mandatory members

of the association and required to pay assessments).

SB 1305: Semipublic Swimming Pool Barrier Gates

This law adds A.R.S. § 9-808 and amends A.R.S. § 11-861. It requires locking devices for pool barrier gates to meet the requirements of any applicable municipal or county regulation beginning January 1, 2015. Municipalities can specify their own codes regarding pools, provided that such an ordinance is equal to or more stringent than state requirements. Certain cities and counties in Arizona have adopted pool gate ordinances that apply to semipublic pools. Any pool operated by a homeowners association generally qualifies as a semipublic pool.

Some ordinances include requirements for semipublic pools gates including: 1) certain barriers to be made a specific way; 2) a maximum mesh size for chain link fences; 3) rules for sliding door entrances and locks; 4) locks that are not allowed, such as dual locks; or 5) the minimum height of a barrier or latch.

This new law grandfathers in certain locking mechanisms of semipublic pools if the pools were built before January 1, 2015 and their locking devices meets current statutory requirements described in A.R.S. § 36-1681(B)(3). These statutory requirements dictate as follows: 1) that the gate be self-closing and self-latching with the latch located at least fifty-four inches above the underlying ground or on the pool side of the gate with a release mechanism at least five inches below the top of the gate and no opening greater than one-half inch within twenty-four inches of the release mechanism or be secured by a padlock or similar device which requires a key, electric opener or integral combination which can have the latch at any height; and 2) that the gate open outward from the pool.

However, any new construction or major renovation of a semipublic pool after December 31, 2014 must meet municipal or county requirements. Any pool operated by a homeowners association generally qualifies as a semipublic pool, so boards should consult with a qualified pool contractor as part of considering any renovation projects to help ensure that all applicable requirements are met.

SB 1482: HOA Omnibus

The legislation contained in this bill will affect planned communities and condominiums in a number of ways. Specifically, the bill contains the following provisions related to community associations:

Representation of Parties; Recording Liens

This new law amends A.R.S. § 22-512 and permits a planned community or a condominium to be represented in small claims court by its employee or its management company. The authorizations for representation must be in writing, and the representation is only permitted in small claims court. The association must be the named plaintiff or defendant in the small claims lawsuit to utilize this form of representation.

Additionally, the new law permits the employee or officer or employee of the management company of a planned community or condominium to record a notice of lien against an owner's property. The employee or management company must be authorized in writing to perform this task, and the recording must be completed by a Certified Legal Document Preparer. The lien must be the result of a statutory obligation (per A.R.S. § 33-1807 (for planned communities) or A.R.S. § 33-1256 (for condominiums)), and not a judgment lien or purchased/assigned lien.

Methods of Voting

This new law permits planned communities (amends A.R.S. § 33-1812) and condominiums (amends A.R.S. § 33-1250) to provide for delivery of voting ballots in two new ways: email and facsimile delivery. Votes cast by email or facsimile delivery are now valid for purposes of establishing quorum. This new law does not change the requirement for associations to allow for in-person and absentee voting as well. All other requirements for ballots remain in place.

New Communities

This new law applies only to planned communities and prohibits city planning agencies (A.R.S. § 9-461.15) or county planning and zoning commission (A.R.S. § 11-810) from requiring that a subdivision be a planned community.

- Exception – The above-referenced government entities "may" require a developer/subdivider to establish an association to maintain private, common or community-owned improvements that are approved and installed as part of a preliminary plat, final plat or specific plan.

- Caveat to Exception – The above-referenced government entities "shall not" require an association be formed or operated other than for the maintenance of common areas or community-owned property.

- Exception – Only applies to plats recorded after July 24, 2014.

The new law makes it clear that this section does not limit the developer. Stated differently, developers are still free to form planned communities, and they are also free to enter into maintenance agreements with the above-referenced government entities notwithstanding anything in this section.

Rental Properties

This new law applies to both planned communities (adds A.R.S. § 33-1806.01) and condominiums (adds A.R.S. § 33-1260.01). A unit or property owner may use their unit or property as a rental property unless prohibited in the declaration and shall use it in accordance with the declaration's rental time period restrictions.

An association may not restrict or prohibit a unit owner from serving on the board of directors based on the owner not being an occupant of the unit.

Allows Third Parties to Act as Agents

Allows a unit or property owner, through a written designation, to authorize a third party to act as their agent with respect to all association matters regarding the rental property, except for voting in association elections and serving on the board of directors.

- Directs the unit or property owner to provide the association with the written designation, which authorizes the association to conduct all business relating to the rental property through the designated agent.

- Specifies that notice by the association to the designated agent regarding a rental property serves as notice to the owner.

Limits Association Access to Lease and Tenant Information

Prohibits an association from requiring an owner or designated agent to disclose any information regarding a tenant, other than the following:

- Name and contact information for any adults occupying the unit or property.

- Time period of the lease including the beginning and ending dates of the tenancy.

- A description and license plate number of the tenants' vehicles.

- If the unit or property is in an age-restricted community, a government issued identification that bears a photograph and date of birth.

Also prohibits an association from the following:

- Requiring a unit or property owner to provide them with a copy of a rental application, credit report, lease agreement, rental contract or any other personal information.

- Requiring a tenant to sign a waiver or other document limiting their civil rights to due process as a condition of their occupancy of a rental property.

Allows an association to acquire a credit report on a person in an attempt to collect a debt.

Limits Fees

The managing agent, or the association if there is no managing agent, may charge no more than $25 as an administrative fee for each new tenancy for a unit or property, but not for the renewal of an existing lease.

- Requires the $25 fee to be paid within 15 days of the postmarked request.

Prohibits an association from the following:

- Assessing or levying any other fee or fine or otherwise impose a requirement on a rental property that is different than on an owner-occupied unit or property in the association, except for fees related to the use of recreational facilities.

- Imposing any fee, penalty, assessment or other charge of more than $15 for incomplete or late information.

Determines any attempt by an association to impose a fee, penalty, assessment or other charge not authorized by statute to void the fee authorized by statute and the requirement to provide information to the association.

Attempts to Abate Criminal Activity

Allows an owner to use a crime free addendum as part of a lease agreement.

Allows an association to enforce provisions in the community documents that restrict certain registered sex offenders.

Requires rental property owners to abate criminal activity.

<u>Nuisance; Action to Abate and Prevent Criminal Activity When Residential Property Used for Crime</u>

The amended law, A.R.S. § 12-991, adds planned communities and condominiums to the list of entities that have standing to sue an owner in Superior Court for nuisance to abate and prevent criminal activity when a residential property is regularly used in the commission of a crime and the association is affected by it. The association may also sue the owner's managing agent or any other party responsible for the property.

<u>Political Signs in Condominiums</u>

This amendment applies only to condominiums (A.R.S. § 33-1261) and clarifies where political signs may be placed in the limited common elements by defining those limited common elements as "doors, walls, patios or other limited common elements that touch the unit, other than the roof." The time limit requirements and definition of "political signs" remain the same.

<u>Hearings Before an Administrative Law Judge</u>

The new law amends A.R.S. § 41-2198.01. The formerly non-refundable filing fee is now refundable as long as the petitioner dismisses the petition or the parties stipulate to dismiss the petition before a hearing is scheduled.