



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

SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS  
**SCOHA NEWSLETTER**

IN OUR 41st YEAR

MAY 2015

## **Do You Know What Your State Legislators Did This Session That Affects Your Association?**

Several bills affecting homeowners associations will become law July 3, 2015.

SCOHA's President, Curtis Ekmark, has been closely involved in monitoring the legislature's activities throughout this session and he will provide details on these new laws and how they will affect your association.

Get a jump on analyzing any changes necessary for your association by attending SCOHA's meeting on May 19 at 11:45 a.m.

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.

Call Daniel Mckinn at 480-922-9292 or send an e-mail to [dmckinn@ekmarklaw.com](mailto:dmckinn@ekmarklaw.com) by 2:00 p.m. on Saturday, May 16 to make your reservation for the May 19 meeting.

### **SCOHA ANNOUNCEMENTS**

**AFTER OUR MAY 19  
MEETING, WE'LL BE  
TAKING THE SUMMER  
OFF. WE'LL SEE YOU ON  
SEPTEMBER 22**

***HAVE A GOOD, SAFE  
SUMMER!***

#### **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,  
May  
19th  
11:45 a.m.**

**Lakeview Room  
McCormick Ranch Golf  
Club  
7505 McCormick Pkwy**

**\$15.00  
Reservations  
Required**

**Call Daniel Mckinn  
at 480-922-9292 by  
Saturday, May 16**

**480-922-9292**

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

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# HOA Contract Review and Negotiation

## Summary of the April 28, 2015 Meeting

SCOHA's guest speaker, attorney Eric Boyd, provided an overview of Contract Review and Negotiations for HOAs.

Mr. Boyd emphasized the point that each contract must contain enough details within the contract to cover both the scope of work and the ability of the HOA to enforce the contract. Such details include specific time-frames, cost of work and material locks and/or increase provisions that address these issues and the HOAs' remedies for these issues and others.

Prior to entering into a contract, the association should not be afraid to negotiate and ask for specific remedies for the "what-if," scenarios. This will be determined in part by the nature of the contract and the work to be performed. Provisions such as the duration of the contract and the ability to get out of the contract should be included.

There are a number of provisions that should be in contracts and carefully reviewed, especially for construction contracts. Are there any warranties for the work, manufacturers' warranties regarding the materials used, and exclusions for the warranted work and/or materials that would void any warranties.

Another provision Mr. Boyd stresses that is important to look for and understand is an indemnification provision. Indemnification provisions are also known as "responsibility provisions" for the "what-if," situations. Basically, this provision should specifically state who is responsible for defending and/or paying for any lawsuits that may result from the contract.

Some other provisions that should be included are those remedies for unfinished work, including compensation for original obligations. This tends to come into play when one contractor fails to finish the work and the HOA must hire another contractor to finish the original work. Provisions regarding

contractual disputes and defaults that might result in the need for attorneys to get involved should also spell out responsibilities for the fees that will accumulate.

In the contract, again, especially for those that involve construction, it should state the type of insurance the contractors and subcontractors should have. HOAs should ensure that all contractors and subcontractors are required to have proper insurance and be bonded. HOAs should check with the Registrar of Contractors for information on contractors and whether they have good standing.

For the larger communities and HOAs that have their own employees on payroll, having proper liability insurance for them is important as well. In these cases Mr. Boyd recommends speaking directly with the HOA's insurance broker and have an in-depth conversation with them defining the HOA's specific needs and worries.

Additionally, payment provisions should always be well-defined in every contract. Terms of the payment and any prepayments like deposits should be predetermined. For contracts requiring down payments, Mr. Boyd recommends that the HOA minimize the amount of the down payment. This is for those "what-if" scenarios in which the contractor does not finish the work.

Arizona has a Prompt Payment Act for contracts that applies to all construction contracts that require 60 days or more to complete. The Prompt Payment Act states that: the contractor submits progress payment requests every 30 days and the payment request is deemed approved 14 days after received unless the HOA provides a written statement of objections. Once the invoice is approved, the HOA has 7 days to pay the contractor. In considering whether or not the work was done adequately, Mr. Boyd suggests consulting an expert on the final work before making final payments.

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Lien waivers and/or releases made by the contractor or subcontractors should be a provision to look for within contracts. Be sure the HOA receives all of the lien releases and waivers as promptly as possible.

As mentioned earlier, remedies that possibly could be in the contract or should be negotiated into the contract are: arbitration, mediation, and liquidated damages. These remedies tend to be the lesser expensive option other than beginning the litigation process. Although there are times when arbitration could be just as expensive, if not more expensive, than litigation.

Another less expensive remedy that is available to HOAs regarding construction contracts is to file a complaint with the Registrar of Contractors. This remedy does not have to be a provision in the

contract for the HOA to pursue. There is a statute of limitations for filing this type of complaint which is two years from completion of construction. Further, this remedy comes at no cost to the HOA. However, the Registrar only holds the contractor to the minimum professional standard. If they are found at fault, they are given an opportunity to fix the problems themselves.

Mr. Boyd reviewed the ultimate remedy for contracts, which is beginning the litigation process. To start, the HOA would need to send a demand letter to the contractor, the contractor then is able to review and respond, and ultimately the contractor is able to make a final offer to complete or fix the original work. This is, however, changing a bit with the passage of recent legislation that will become effective in July.

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## Homeowners Association Committees

A question often arises as to whether certain meetings of board or committee members constitute “board meetings” that must be open to association members and duly noticed under the law. In general, if a majority of the board members are congregating anywhere to discuss association business, this constitutes a board meeting, and must be noticed and open to association members. Likewise, if the board appoints a committee and a majority of the board is part of that committee, a meeting of the committee may be considered a board meeting, and should, therefore, be noticed and open to association members. This is true even if non-board members are also serving on the committee.

A general rule of thumb to remember is if a majority of the board members are gathering in any capacity to address association business, this gathering constitutes a board meeting, which must be open and duly noticed to the association members.

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## 2015 SCOHA OFFICERS AND DIRECTORS

| <b>Director</b>                      | <b>Phone No.</b> | <b>E-mail Address</b>             |
|--------------------------------------|------------------|-----------------------------------|
| Curtis Ekmark – President            | 480-922-9292     | curtis@ekmarklaw.com              |
| Peter Wheeler Reiss – Vice President | 480-994-4386     | peterreiss4@gmail.com             |
| Matt Metz – Treasurer                |                  | srca@mattmetz.com                 |
| Jaime Uhrich – Corporate Secretary   | 480-860-1122     | jaimeuhrich@mccormickranchpoa.com |
| Walt Young                           | 480-994-4331     | DEAZWYBY@aol.com                  |
| Bob Rogers                           | 480-585-0929     | rrogers4542@gmail.com             |
| Jeanne Malys – Recording Secretary   | 480-922-9292     | jeanne@ekmarklaw.com              |

