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SCOTTSDALE COUNCIL OF HOMEOWNERS ASSOCIATIONS SCOHA NEWSLETTER

IN OUR 42nd YEAR

APRIL 2016

What Would You Do? April 26, 2016

At the April 2016 SCOHA meeting, attorney **Scott Carpenter** will host a game-show style event called **What Would You Do?**

Mr. Carpenter will take us through an interactive experience of various situations a Board Member or Manager may face in their HOA and the audience will be able to participate by answering "what you would do" in the given situations. He will also be able to address any questions you may have.

The April 2016 meeting will be on **Tuesday, April 26, 2016** at **noon**.

Call Andrea Moscarello at **480-427-2884** or send an e-mail to **andrea.moscarello@carpenterhazlewood.com** by 2:00 p.m. on Friday, April 22 to make your reservation for the April 26 meeting. We look forward to seeing you there!

SCOHA ANNOUNCEMENTS

UPCOMING MEETING:

May 24 - Annual Legislative Update

SCOHA's NEW WEB SITE:

SCOHA's web site has been restored and remodeled by our esteemed Treasurer, Matt Metz.

Check it out here:

www.scottsdalehoa.com



**SCOHA
DATA TO
REMEMBER:**

**Tuesday,
April 26,
2016
11:45 a.m.**

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

**\$15.00
Reservations
Required**

**Call Andrea Moscarello
at 480-427-2884 by
Friday, April 22**

480-427-2884

andrea.moscarello@carpenterhazlewood.com

Contracts

Summary of the March 22, 2016 Meeting

For the March 22, 2016 SCOHA meeting, SCOHA Treasurer Matt Metz teamed up with SCOHA President Curtis Ekmark to cover landscaping contracts and contracts in general.

Mr. Metz started the presentation off by explaining how writing an effective contract can save an association money and heartache. He has first-hand experience with this problem. His Association would pay a lot of money each month to the landscaping contractor for regular service, yet the contractor would say that they needed additional products and services that were not built into the monthly basic charges, to complete the work. For example, if the landscaping did not look good after the initial visit by the contractor, the contractor could see it as an opportunity to generate additional revenue by advising that they need to use more chemicals, a special treatment, or other items - at an additional cost.

As time went on, Mr. Metz was able to realize that although the landscaping contractors were doing what was stated in their contract, they still were able to charge extra for additional services to make the property look to what was expected. The bottom line was that the contract specified the *means* rather than the *ends* - the *HOW* rather than the *WHAT*.

In this model, the contract would say to have a specific number of people on site and to apply a specific chemical a certain number of times. If the contractor did these things, and the results were still not what they wanted, they had no choice but to ask for additional efforts at additional costs. Essentially, there was a built-in incentive to NOT perform.

In order to fix this problem, Mr. Metz and his Association decided to change their mindset when it comes to creating the

contract itself. They decided to change the contract from one that managed and specified the *PROCESSES*, to one that managed and specified the *RESULTS*. They would say things like "the contractor will ensure the health and attractiveness of all our landscaping, plants and turf." This created a new relationship with the contractor. The Association's role was that they were the experts in knowing the results they wanted. The landscapers are the experts in knowing how to achieve those results. The Association lets them do the work as they best know how to do it.

Under this new model, instead of detailing processes in the contract, they would detail outcomes. For example, instead of saying "Pre-emergent will be applied to all gravel/crushed granite areas twice per year", they would keep it general by saying "All lawns, common areas, plant beds, sidewalks, and walkways will be kept free of all undesired growth". This way, just in case two treatments of pre-emergent did not cause the weeds to go away, you could not be charged extra, because it outlines the outcome that you want no weeds, no matter what process they use to obtain that goal.

Mr. Metz then went on to describe that since they were specifying outcomes rather than processes, it helps to have a standard of what the outcome should be. In this instance, a picture is worth a thousand words. He strongly recommended that you provide photos that demonstrate what you think is acceptable landscaping, like including a photo of acceptable vs. unacceptable turf, a picture of weeds in rock beds, or acceptable brush trimming. Mr. Ekmark agreed that photos are an important aspect to include, since including just descriptions such as "healthy and attractive landscaping" can be interpreted in many different ways. Especially if the matter is brought to a lawsuit in court, the

photos would go a long way. In this case, do not be afraid to put photos right in your contract so you may refer to them in case of a disagreement.

Mr. Metz clarified that they still specified some items, such as the frequency of services. They would include things like "all turf must be mowed and edged every week," and "all shrubs should be trimmed every month". They also pre-negotiated prices for any "extras" that could arise, such as prices for tree or plant replacements, breaker valves, etc. The things that they decided NOT to specify were the size of the crew, the minimum hours of work, or the brand or amount of seed or chemicals that should be used.

The benefits of using this type of contract were seen right away in Mr. Metz's community. Instead of living in fear of the variable and unpredictable timing and dollar amount of the old contract, they were able to plan for 90% of the contract budget, and only consider any small bumps that may arise to raise the cost.

Mr. Metz said the first step in starting off this process of change was to look at many existing landscaping contracts from other communities through the management company. They also researched what their current contract looked like with their landscaper, and what historically seemed to drive up the price. Then, taking all that into consideration, they used their new mindset of specifying results (not processes) to write a contract with a firm fixed monthly price to guarantee the results. The contract writing process was long and thought out and they went through many drafts to include everything they wanted. Then, they used that contract to create a request for quote (RFQ) to send to different landscaping companies that their management company recommended. Finally, they met with the winning contractor to make sure they understood the principle of the contract and that they would be able to perform the duties of the contract, and still make a fair profit.

Mr. Ekmark also pointed out that it is important to hire a good, reputable landscape company that you know will do a good job, so do not be shy about asking around to your management company or even your HOA attorney. He also reminded us that there is no state law that requires you to get an annual bid on these services.

Both speakers proposed getting the help of a good HOA attorney to ensure your contract includes all the requisite and proper legal terms and conditions. Mr. Ekmark made a special point regarding indemnification, saying that this is crucial to define in the contract. If a lawsuit arises out of the landscape company's work, this would determine who is responsible, and your contract should make clear that the landscaper is responsible.

Additional tips that Mr. Metz recommended were to get help from your management company to make suggestions of good contractors and to prepare for the RFQ and manage the bidding process. Mr. Ekmark recommended that it is a good idea to protect yourself by making sure you do not pay for the services up front. You also should not accept a quote or bid without making sure that you have a contract in place.

Finally, just because you have a better contract for your Association in place, it does not mean that you can stop monitoring the contractors work. You no longer have to check on *how* they are doing the work, but still keep an eye on the results, to ensure your standards are being met.

The speakers concluded that with this new mindset, it can really help make your Association's experience with landscaping contracts easier. Specifying your results instead of your processes, taking your time to do your research and contact at good HOA attorney will give you the peace of mind that your contractor can no longer over-charge you for their services.

2016 SCOHA BOARD AND DIRECTORS

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