2015 WVHOA Newsletter

APRIL 2015

WEST VALLEY HOMEOWNER ASSOCIATIONS

April's Luncheon Meeting: HOA Contract Review & Negotiation

The next meeting of the West Valley Homeowner Associations will be April 1 - HOA Contract Review and Negotiation. Attorney Eric Boyd will discuss issues to consider for various types of contracts, as well as the type of pitfalls that can arise.

We'll be meeting on April 1 at 11:45 a.m. in the Apache Room, Chaparral Center in Sun City Grand, 19781 N. Remington Drive in Surprise. Cost for the luncheon is $10. Lunch will be served from 11:45 to noon and the program will start promptly at noon.

Please make your reservations by contacting Rocky Roccanova at rockyscg@yahoo.com or 623-221-0470. Reservations must be received by 5:00 p.m. on Saturday, March 28.

Payment for the luncheon may be made by cash or check (personal or business check) at the door only. We are not able to accept "pre-payment" for the luncheon meetings.

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Reminder:

In order to provide plenty of food for the luncheons, it would be sincerely appreciated if all reservations are e-mailed no later than 5:00 p.m. on Saturday, March 28.

Please e-mail or phone reservation requests to Rocky Roccanova at: rockyscg@yahoo.com or 623-221-0470.

Thank you.

Meetings are held in the Apache Room of the Chaparral Center, 19781 N. Remington Drive in Sun City Grand. Sun City Grand is located on the west side of Grand Avenue, about five miles past the Bell Road intersection. Turn west onto Sunrise and take it to the second intersection, which is Remington. The Chaparral Center is located about .2 of a mile on the right side of Remington Drive adjacent to the Sonoran Plaza.

National HOA Case Law Update

WVHOA Vice President, Curtis Ekmark, provided his annual review of recent HOA cases around the country.

He indicated that the number of cases has doubled this year, which means the HOA industry has become more litigious. This is due to the fact that there are more laws governing HOAs and a lot of HOA governing documents are outdated and should be amended.

The first case was from Montana and its basic theme is documents must be amended uniformly. If a certain group of owners is being targeted by an amendment, it will be struck down in court.

A New York case focused the issue on board resolutions and determining if the board has the power to draft and pass resolutions. A board cannot draft resolutions to clarify the CC&Rs – this must be done only by amendment.

In Michigan, Wells Fargo Bank foreclosed on a unit. The association sent the assessment invoice to Wells Fargo requesting payment of assessments from the date the bank acquired the unit. Wells Fargo claimed it did not have to pay assessments during the redemption period. The court found in favor of the association, stating that Wells Fargo had to pay the assessments from the date it acquired the unit.

A couple positive cases came out of Illinois and Ohio in which owners refused to pay assessments because they didn't like the way the HOAs maintained the common areas. The courts found in favor of the HOAs.

In a California case, the HOA was paying attorneys' fees first when receiving payment for past-due assessments and then applying the balance towards the owner's assessment account balance. A state statute requires HOAs to pay the assessments first and then any fees or costs after that. The HOA lost. Arizona has a similar statute: All payments must be applied first to the assessment balance.

A New Jersey case proved that it's important not to be a jerk. An owner in a high-rise condo wanted to run for the board. He printed flyers and slid them under the doors of the units. The board told the owner that he could not do this and fined him. He sued the HOA. In court, evidence was provided that the current board members running for the board had printed and distributed flyers to all the units in the same fashion. The HOA lost.

In Washington, a new group of board members sued a former group of board members claiming they breached their fiduciary duty to the association. The statute of limitations ran out before the suit was filed and so the suit against the former board members was dismissed. However, this case still emphasizes the importance of following the law and the governing documents and make sure you dot your i's and cross your t's.

A Florida case involved parking spaces and whether the parking space agreement was a license or an easement. One is revocable and the other is permanent. It proves the importance of getting the HOA attorney involved when drafting these types of documents.

In Georgia, an HOA was sued for not properly maintaining insurance coverage. In this HOA, a seven-year-old drowned in the HOA pool and the HOA was sued. When the HOA tendered the claim to its insurance company, the company pointed out that the policy only covers property owned by the HOA. This was a condominium community and the property is owned by the owners. The insurance company did not have to defend the HOA in this suit.

A Florida case also involved an insurance claim. The HOA suffered damage from a tropical storm. It took about six weeks to get bids to repair the damage. The HOA then tendered a claim to the insurance company. The company denied the claim because the HOA did not give prompt notice of the claim and six weeks was too long to wait to tender. The HOA lost in court.

In an Illinois case, an HOA was sued by someone who was bitten by a dog in the common area. The HOA won because it had no prior knowledge that the dog was vicious.

In another Illinois case, the HOA was sued by an owner relating to a denial of an architectural request. The board president lived next door to the owner and recused himself when it came time to vote on the request. The owner in court claimed that the HOA was picking on him, especially the board president. The HOA won, and the key factor was that the board president recused himself when voting on the request.

A scary case came out of Texas regarding an annual meeting. An owner claimed that he did not have to pay dues or abide by the CC&Rs because the 2012 annual meeting was not conducted properly. The owner won. This created a major disaster for the HOA because everything it did from that 2012 meeting forward is now null and void.

A New York HOA sued an owner for having chickens as pets. The documents were a bit general in their description of what was considered a household pet. The trial court ruled in favor of the owner stating that chickens are household pets. The HOA appealed it. The appellate court affirmed the ruling that chickens are household pets. It got to the New York supreme court which ended up ruling in favor of the HOA stating that chickens are not household pets.

In Florida, an HOA community had a strict policy of no pets. An handicapped owner required the assistance of a dog to help her pick up things, open and close doors, turn lights on and off, etc. The HOA said that the owner was in violation and that she could not keep the dog. The HOA was sued and it lost in court. This was a fair housing matter in which the disability was obvious and the HOA violated the fair housing laws by demanding the owner get rid of the dog.

A Tennessee case involved a couple who had two handicapped children that could not go outside. The couple submitted a request to build an addition to their sunroom so the children could enjoy their yard while still being inside. The HOA said that the couple could build the sunroom but they had to put a tile roof on it. The couple couldn't afford the tile roof. The HOA lost in court because the couple did not have the money to install the tile roof. Because of that request, the court stated that the HOA was essentially preventing the couple from being able to build the extension for their handicapped children.

In a Florida case, the HOA banned pit bulls in the community. An owner sued the HOA because he bought a pit bull. The court ruled against the HOA stating that it could not exclude entire breeds of dogs when there is no evidence of danger.

In another fair housing case, an HOA in Nevada banned an owner from bringing his service dog into the clubhouse. The owner had to use a walker to support himself. The HOA asked for proof of his disability and he did not respond. After the HOA banned the dog from the clubhouse, the owner sued the HOA and the court ruled in favor of the owner stating that his disability was obvious and the HOA had to allow the service dog into the clubhouse. If the disability is obvious, an HOA cannot ask for proof of disability.