

2015

WVHOA Newsletter

FEBRUARY 2015



WEST VALLEY HOMEOWNER ASSOCIATIONS

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February's Luncheon Meeting: Annual HOA Law Update

The next meeting of the West Valley Homeowner Associations will be February 4 - National HOA Law Update. WVHOA Vice President, Curtis Ekmark, will be providing his annual review of the HOA laws around the country and how they may impact your association.

We'll be meeting on February 4 at 11:45 a.m. in the Hopi 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, January 31.

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.

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, January 31.

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 Hopi 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.

HOA Litigation Issues

WVHOA Vice President, Curtis Ekmark, provided his update on current litigation issues facing associations.

There are several things associations can focus on that will either help avoid litigation or make it easier to defend associations to attempt to resolve the case quickly:

1. Review the Governing Documents. Specifically focus on the insurance requirements – an association needs to know if it is properly insured today, not when it is being sued. An association should be able to select its own attorney when defending a lawsuit. Check your policy to see if you can select your attorney or if your insurance provider will be selecting your attorney. You don't want to be insured by a provider that selects an attorney that is not familiar with HOA law.

2. Consider Spending Money on Experts When Needed. The Nonprofit Corporation Act offers protection for board members who hire experts and rely on their advice or opinions. For example, in a case involving solar panels installed on a second-story balcony extension, the association hired an expert to inspect the panels and issue a report. Under Arizona law, an association cannot deny installation of solar panels outright. The expert indicated that the panels did not have to be placed on the second story, which was the issue; the performance of the panels would not be diminished if they had been installed on the first floor, thus hiding the panels from view of neighboring properties and accomplishing their purpose for the owners. Because of spending money on this expert, the association will probably win this case in court.

3. Read Your Contracts. Before entering into a contract, it is vitally important to read and understand all of the provisions, especially the termination and indemnification clauses. Don't hesitate to have your association's attorney review contracts.

4. Communicate All Architectural Decisions in Writing. Many litigation issues arise from architectural submissions/non-submissions. When dealing with an owner and/or his/her representative in an architectural issue, be sure to put everything in writing. Do not provide verbal approvals or denials.

5. There is a Difference Between Believing Something and Proving It. Online research can provide quite a bit of information regarding owners' claims that they are or are not doing something that might be considered a nuisance.

This is usually the case with short-term rentals. If your association documents prohibit or limit short-term rentals, you can usually collect evidence/information online from sites such as VRBO that would help the association prove the owner is renting out the home as a short-term rental. Documentation is very important.

6. Focus on Keeping Accurate, Complete Records. For example, accurate records play a big part in determining whether an amendment passed or did not pass. Same thing for annual meetings. Each year before the annual meeting, the association needs to be answering a series of questions at least 120 days before the meeting in order to ensure that the meeting was legal and run effectively.

7. Tell Your Attorney the Whole Story. If there is a problem, the attorney might be able to fix it if he or she knows everything. It's very important to provide all this information to your attorney before filing suit.

8. Follow the Association's Documents and Rules When Enforcing the Documents. If you are going to enforce the association's documents, you need to ensure the association is following its own documents and rules. The best rules are those that are simple to understand. If possible, drafting and distributing design guidelines also proves to be very helpful with enforcement.

9. Be Careful About Conditional Approvals. Conditional approvals are usually not drafted properly and can leave the door open for owners to take advantage of the poor drafting.

10. If an Owner Has Submitted a Complicated Architectural Plan, Consider Hiring an Architectural Expert. Check your documents – they might give the association the ability to pass the cost of the expert on to the owner as part of the architectural review process.

11. Don't Wait Too Long to File Suit. If you wait too long, you may lose your ability to file suit.

12. Watch Out For Contractors Who Claim They Can Get Your Property Damage Fixed For Free. If you've suffered property damage and a contractor comes to you and says he will work with the association's insurance carrier to obtain the insurance proceeds to pay for the damage and will do the work at no cost to the association, don't believe him. This type of contract is illegal and unenforceable.

13. Understand Maintenance Responsibility. Especially in condominiums, it's important for an association to understand its maintenance responsibilities compared to those of the owners'. It's best to understand this now, as opposed to waiting until a water leak has caused damage.

Mr. Ekmark explained that his office is seeing an increase in the number of lawsuits filed against associations. It's now more important than ever to make sure your association is following its governing documents, maintaining complete and accurate records and communicating effectively with owners and attorneys.

Benefits of Attending WVHOA Meetings

As part of your membership in WVHOA, you receive the WVHOA Newsletter. While this contains information regarding homeowners associations, you still derive additional benefits by attending the meetings. For example, our speakers usually provide detailed handouts pertaining to our meeting topics. Also, you get to meet other association board members and discuss and share ideas.

We hope to see you on February 4!