

2017

WVHOA Newsletter

March 2017



WEST VALLEY HOMEOWNER ASSOCIATIONS

WVHOA ANNOUNCEMENTS

Upcoming Meetings:

- April 5 - TBD
- May 3 - Legislative Update

A REQUEST:

If you must cancel a reservation, please let us know ASAP as WVHOA is obligated to pay for every meal ordered and not cancelled at least two days before the meeting.

Thank you.

Please arrive for WVHOA meetings no sooner than 11:30a.m.

BOARD OF DIRECTORS:

Colleen Lombard, PCAM, President
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Curtis Ekmark, Vice President
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Karen Jones, Member At Large
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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.

HAPPY ST. PATRICK'S DAY - MAY THE LUCK OF THE IRISH AND THE BEST OF HEALTH BE WITH YOU!



Annual Legal Seminar to Address Pertinent Legal Issues - March 1, 2017

Attorney **Curtis Ekmark**, WVHOA's Vice President, will discuss important legal issues facing homeowners associations by highlighting the HOA cases around the country. Most importantly, he will address your questions at SCOHA's **Annual Legal Seminar** on **Wednesday, March 1** at noon.

Please join us in the Apache Room, Chaparral Center in Sun City Grand, 19781 N. Remington Drive in Surprise. Cost for the luncheon is \$10. **Please arrive at 11:30 a.m.** Lunch will be served beginning at 11:45 and the program will start promptly at noon.

In order to provide plenty of food for the luncheons, it would be sincerely appreciated if reservations are made with Colleen Lombard at calombard@cox.net or 602-689-1686. Reservations must be received by 5:00 p.m. on Friday, February 24, 2017.

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.

Summary of the February 2017 Meeting

Landscaping Contracts

For the February 2017 WVHOA meeting, SCOHA Treasurer Matt Metz teamed up with Attorney 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 to refer to.

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.