

2015

WVHOA Newsletter

OCTOBER 2015



WEST VALLEY HOMEOWNER ASSOCIATIONS

WVHOA ANNOUNCEMENTS

Current Members - Refer a friend to become a member and receive a **FREE LUNCH!**
Contact Colleen for more information

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Do not forget to make your reservations with Rocky Roccanova by 5:00 p.m. on Friday, October 2!

Reach Rocky at rockyscg@yahoo.com or 623-293-8222.

October's Luncheon Meeting: Fair Housing

The next meeting of the West Valley Homeowner Associations will be October 7, 2015. Lynn Krupnik, senior partner at Ekmark & Ekmark, L.L.C., will review the finer points of fair housing matters in detail.

We will be meeting on October 7 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. 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 Rocky Roccanova at rockyscg@yahoo.com or 623-293-8222. Reservations must be received by 5:00 p.m. on Friday, October 2.

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:

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.

Thank you!

Legislative Update 2015

Summary of the May 6, 2015 Meeting

WVHOA's Vice President, Curtis Ekmark, was WVHOA's guest speaker before the summer break.

The Legislature passed several new laws pertaining to homeowners associations. They became effective July 3, 2015, except for SB1048 which will become effective December 31, 2015.

HB 2084: Disclosure

This new law amends A.R.S. §§ 10-11622, 33-1242, 33-1256, 33-1803, and 33-1807. It states that an association must attach a statement to its annual report to the Corporation Commission with the address for the association, the name of its management company, the association's or management company's telephone number, e-mail address, website (if any), and fax number (if any). The association must make changes to their information by filing a notice with the Commission within 30 days. This bill removes the requirement that the association file a notice with the county recorder containing its name, address, and telephone number.

SB 1048: Vexatious Litigants

This law modifies existing statutes A.R.S. §12-302 (Court Fees) and A.R.S. § 12-3201 (Vexatious Litigants). The new law prohibits courts from waiving court fees/costs in a civil action filed by a self-represented person who previously was declared a vexatious litigant by any court. If a self-represented person previously granted a waiver or deferral of court fees/costs is later found to be vexatious by any court, the court is required to order that litigant to pay any waived/deferred fees/costs. It also allows a party to petition the court to have a litigant declared vexatious, even if a prior request was denied (or never ruled upon) by the court. In this last point, the party can petition for this declaration even when there is not an open case involving that self-represented person before the court. This amendment goes into effect on December 31, 2015.

SB 1091: Director Removal

The procedure for removal of a director in planned communities (A.R.S. § 33-1813) and condominiums (A.R.S. § 33-1243) is amended by this new law. Currently, members may petition for a special meeting to vote on the removal of a director. This bill provides that only members who are eligible to vote at the time they sign the removal petition would be counted towards the minimum number of signatures required on the petition. Also, only members who are eligible to vote would count towards a quorum at the special meeting called to vote on the removal of the director. Finally, only members who are eligible to vote at the time of the special meeting would be able to vote on the removal of a director.

HB 2578: Amending the Purchaser Dwelling Act (A.R.S. §12-1361 et seq.)

This new law significantly changes the procedural requirements under the Purchaser Dwelling Act for bringing a construction defect claim (i.e., "dwelling action"). Please be warned that this new law is complicated and the interplay between this new law and an association's governing documents is even more complicated. The failure to get this process right may result in the loss of a valid claim. Thus, we strongly suggest that any association with construction defects immediately contact their general counsel for a comprehensive review of the situation and to prepare a plan.

Notice of Claim to the Seller (i.e., the party responsible for the defect)

An association must provide written notice by certified mail specifying, in detail, the basis for the claim. There is an exception for life and safety issues. The notice of claim must include a detailed and itemized list that describes each alleged construction defect, the location that each defect has been observed in each dwelling that is the subject of the notice, and the impairment to the dwelling that has occurred as a result of each defect or is reasonably likely to occur if the defect is not repaired or replaced. The association's governing documents may also contain requirements for the notice of claim to the Seller. Documents may contain a litigation approval requirement that may apply at a certain point.

Right to Cure Period

The Seller has a statutory right to repair and replace the alleged defect. Within 60 days after receipt of the notice of claim, the Seller must send the association a written response. The response may state the Seller intends to repair or replace the alleged defects and/or pay money or other consideration. If the response indicates the intent to make repairs, the response must describe the repairs to be made and time in which they are to be performed. The Seller must make "reasonable efforts" to begin the repairs or replacements within 35 days after the Seller's notice of intent to repair/replace the defects, or 10 days after any required permits are obtained, whichever is later. The association is not required to give a release of claims if the Seller elects to make repairs. If the response contains an offer to pay money or other consideration, the association may reject the offer and file a dwelling action – but only after the Seller has completed the repairs it did choose to make. If the association wants to accept the offer to pay money or other consideration, the parties may negotiate a release of claims.

If the Seller does not respond to the community association's notice of claim within 60 days, the association may file a dwelling action. At the conclusion of any repairs or replacements, the association may file a dwelling action and may include a claim for inadequate repair or replacement if applicable. The statute of limitations and statute of repose are tolled for thirty (30) days after substantial completion of the repairs or replacements.

Filing a Dwelling Action or ADR (if applicable)

If the association's governing documents contain a commercially reasonable alternative dispute resolution ("ADR") process (i.e., mediation and arbitration), either the Seller or the association may invoke that process. The governing documents will dictate timelines and requirements for the ADR process. Before filing a dwelling action, the association must provide written notice to its members and hold a member "Town Hall" meeting. In addition to any requirements contained in the governing documents, written notice to the members must include "material information" about the dwelling action. Material information includes a statement that describe the nature of the action and the relief sought or any settlement offers or demands. The expenses and fees the association anticipates will be incurred, directly or indirectly, to prosecute the dwelling action, including: attorneys' fees, consultant fees, expert fees, and court costs. The association then holds a "Town Hall" meeting with the members to discuss the dwelling action. The governing documents may also contain requirements for the "Town Hall" meeting. When filing a dwelling action, the association has an "affirmative duty" to demonstrate compliance with the governing documents and with the statute. If the association fails to comply with this statute or with its governing documents, the lawsuit shall be dismissed. The Seller has standing to assert the association's noncompliance with any applicable ADR provisions.

After Litigation (or ADR if applicable)

Under the new statute, attorneys' fees, expert fees and costs are no longer authorized for the successful party. The association must disclose a plan to the members for any proceeds received from the dwelling action within 30 days after the proceeds are received. The association shall preserve records adequate to demonstrate compliance with the statute for five years.

