

2013

WVHOA Newsletter

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WEST VALLEY HOMEOWNER ASSOCIATIONS

www.wvhoa.org

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March's Luncheon Meeting: Annual HOA Legal Update

The next meeting of the West Valley Homeowner Associations will be March 6 – Annual HOA Legal Update. WVHOA Vice President, Curtis Ekmark, will be providing his annual update on legal issues and national case law affecting homeowners associations.

We'll be meeting on March 6 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 Colleen Lombard at calombard@cox.net or 602-795-2363. Reservations must be received by 5:00 p.m. on Friday, March 1.

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.

Reservations/Meeting Reminders:

We look forward to meeting with you at the March 6 HOA Legal Update luncheon. This presentation is extremely popular and usually sold out in advance. Please make your reservation as soon as possible prior to the March 1 deadline.

REMINDER - THE MEETING DAY HAS BEEN CHANGED TO:
The FIRST Wednesday of the month.

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.

TRENDS IN FAIR HOUSING FOR HOAs

Attorney Eric Boyd of Ekmark & Ekmark, LLC, was WVHOA's guest speaker.

Federal and state statutes prohibit discrimination relating to housing on the basis of race, color, national origin, religion, sex, familial status and disability. The state statutes pertaining to fair housing issues are A.R.S. §§ 41-1491 through 41-1493.03.

The familial status factor pertains to a family with a child under age 18 or someone who is pregnant. Some associations are exempt from the familial status discrimination if they are age-restricted communities. In order to qualify as an age-restricted community, an association must meet federal and state requirements on an ongoing basis. Even though an age-restricted community is exempt from the familial status discrimination, it still cannot discriminate against the other protected classes.

An association needs to treat all groups equally, but special provisions apply to disability. For example, if the association allows a men's group to form and use the clubhouse, it must allow equal access for a women's group to form and meet. Or, if the association allows groups of owners and their guests to reserve the clubhouse without charge, the association must apply this same principle to any group who wants to meet, regardless of membership in a protected group. Clubs should not be exclusionary. They should allow all owners to participate in the club.

An association cannot discriminate against any protected class in its rules and regulations. For example, an association cannot establish adults-only swim times or prohibit children from using certain facilities, except for legitimate safety reasons. Instead of adopting a rule that prohibits children from riding bikes on the sidewalks, the association should adopt a rule that prohibits anyone from riding bikes on the sidewalks. The association should not have rules that are so strict that they essentially prevent children from playing anywhere.

An association cannot discriminate in enforcing its rules against a protected group. For example, an association cannot send violation notices to a protected group based on neighbor complaints and ignore violations from others who are not in a protected group, or an architectural committee cannot refuse to approve submittals from certain homeowners based on race or national origin.

In order to avoid this type of discrimination, the association should adopt a uniform system of enforcement: Verify the violations, treat everyone equally and keep records of enforcement.

An association must allow reasonable accommodations in its rules, policies, practices or services for persons with disabilities. Disabilities can be emotional and mental as well as physical. If the person's disability is obvious, the association cannot require proof of the disability. If the disability is not obvious, the association can require proof that it exists (from a doctor or other healthcare provider), but the association does not need to know

the exact disability. The accommodation being requested must be necessary for the person to be able to have the same opportunity to use and enjoy his property as a non-disabled person. The association may need to use association funds to accommodate the person.

If the accommodation request poses an undue administrative or financial burden, the association may suggest an alternative that would satisfy the disabled person's needs. Engage in an interactive process to reach a joint accommodation solution. Trends in accommodation requests include service animals, comfort animals, parking, RV parking or different types of group homes.

An association needs to permit reasonable structural modification of the premises at the expense of the person requesting the modification (unless the association is subject to the Americans with Disabilities Act). An association is only subject to the ADA if it opens up its facilities to the public. The association can exercise reasonable architectural approval as long as it acts reasonably and it may suggest alternatives.

The more the association challenges a disability, the more it increases the risk of potential liability. However, if the disability is not obvious, the association can ask questions about such things as: 1) Basis of medical provider's knowledge of patient's condition, 2) Explanation of patient's handicap and major life activities that are impaired, 3) Explanation of why accommodation or modification is necessary to address handicap, or 4) Relationship of services provided by medical provider and the disability of the patient.

It is important to document these reasonable accommodations and modifications. An association should maintain documentation to support the accommodation or modification that shows why the association is allowing it. This documentation must be retained in the association's records in case the association is challenged by other owners. The association should provide the owner with a confirmation letter and place a copy of the letter in the association's files.

If the association discriminates or does not allow a reasonable accommodation, the resident could file a fair housing complaint with the Arizona Attorney General's office and the Department of Housing and Urban Development. The resident could also file a civil complaint against the association for damages.

It's important to keep in mind that fixing the violation after a fair housing claim has been filed does not make the claim go away. The Attorney General's office is looking at the violation at the time it occurred.

The association will be notified of a fair housing complaint and will be allowed to respond. The Attorney General's office will conduct an investigation and will also allow the parties to mediate to discuss a resolution. A decision will be rendered. If there is no conciliation, the Attorney General's office must file a formal civil complaint in court. If the court rules in favor of the Attorney General, it could obtain injunctive relief and monetary damages against the association. If the Attorney General can show a pattern or practice of

discrimination, the association could be liable for additional damages of up to \$50,000 for the first occurrence and \$100,000 for each occurrence thereafter. The association could also be liable for attorneys' fees.

An association cannot retaliate against a person for making a complaint or for enjoying the rights provided by the fair housing laws. For instance, an association cannot charge a person for the association's attorneys' fees in responding to a fair housing complaint even if the complaint was dismissed.

Fair housing complaints can have some serious ramifications. Only a few insurance companies cover the cost of defending a fair housing complaint. No insurance company will pay for damages if the association has discriminated or failed to allow a reasonable accommodation.

A few examples of actions that can get the association in trouble:

- E-mails complaining about the disabled person. E-mails are discoverable in litigation!
- Outright denial of request for reasonable accommodation.
- Imposing fines when the person has requested an accommodation.

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 March 6!