

2013

WVHOA Newsletter

JANUARY 2013



WEST VALLEY HOMEOWNER ASSOCIATIONS

BOARD OF DIRECTORS:

Colleen Lombard, PCAM, President
602-795-2363
calombard@cox.net

Curtis Ekmark, Vice President
480-922-9292
cekmark@ekmarklaw.com

Mitzi Mills, Secretary/Treasurer
623-546-7441
mitzi.mills@scgcam.com

UPCOMING MEETINGS:

March 6 HOA Legal Seminar

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.

JANUARY'S LUNCHEON MEETING: TRENDS IN FAIR HOUSING

The next meeting of the West Valley Homeowner Associations will be February 6 - Trends in Fair Housing. Attorney Eric Boyd with Ekmark & Ekmark, LLC, will provide an overview of fair housing issues affecting associations and the types of claims associations are facing.

We'll be meeting on February 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, February 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.

REMINDER

**THE WVHOA LUNCHEON MEETING
DAY HAS CHANGED TO THE FIRST
WEDNESDAY OF THE MONTH .**

**We look forward to seeing you on
February 6, 2013.**

LITIGATION ISSUES FACING HOAs

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

He began by issuing a word of caution about being careful what to say in e-mails. E-mails are discoverable in litigation and have proven to be damaging to some associations' cases. He's also finding that opposing parties are now requesting production of Facebook and Twitter accounts in litigation matters.

Mr. Ekmark reviewed two large cases currently pending in the state. The first lawsuit was filed in Pinal County against 60 associations and 15 management companies relating to transfer fees charged at closing. If an association has questions about the transfer fees charged at closing, it should contact its legal counsel to review them to ensure the association is complying with the law.

The second large case is a class action against every company that offers "free" collection services. The complaint is that these companies are gouging homeowners to make up for the fact that they are not charging the association for the collection process.

Currently, one of the biggest issues is whether certain associations can tow. In order to tow, the streets must be the private property of the association, signage must be placed in visible locations throughout the private property and the association must comply with municipal codes. An association cannot tow off of public streets.

When negotiating contracts with vendors, the association should ensure the vendor will indemnify the association. Mr. Ekmark has seen many association contracts in which the association agreed to indemnify the vendor. This does not protect the association.

In the administrative law judge process, the judge will not award attorneys' fees. In a recent case, Mr. Ekmark's firm was successful in getting an ALJ matter dismissed on behalf of the association. Unfortunately, the ALJ did not award the association its attorneys' fees. This association is contemplating proposing an amendment to its CC&Rs that if an ALJ petition is filed against the association and the association prevails, it can collect its attorneys' fees.

Mr. Ekmark emphasized the importance of understanding the economy and warned that associations must be careful more than ever before. Nearly 42% of the homeowners in Arizona do not have equity in their homes. The housing market has hit rock bottom and is starting to come back up. This is most likely due to investors who are buying homes and turning them into rentals. Therefore, associations will see more rentals within their communities.

There has been an increase in lawsuits pertaining to the failure to maintain the common areas. Mr. Ekmark emphasized the importance of relying on the advice of experts when maintaining the common areas and the importance of documenting everything.

“We have always done it that way” is not a defense.

When drafting Board resolutions, make sure they are authorized by the CC&Rs and not in conflict with them.

The Board of Directors must follow its own rules.

An association should have its legal counsel review its contracts and do not make any changes to the contract without the Board's approval.

Check with your insurance agent to ensure that the association can choose its attorney if it gets sued. You should obtain this information every time you renew the association's insurance coverage.

Be as consistent as possible when applying penalties and late fees. The goal of penalties is to gain compliance. If the association obtains compliance, it should waive the penalties.

An association should know of every issue related to its annual meeting 120 days before the annual meeting.

An association can limit renters if the CC&Rs provide for it. If the CC&Rs do not provide for limitations on rentals, an association should consider amending them relating to the rentals.

Do we have your e-mail address?

You'll receive the WVHOA newsletter, meeting announcements and legislative updates quickly by e-mail.

If you would like to receive WVHOA correspondence by e-mail, please send your e-mail address to jeanne@ekmarklaw.com or call her at 480-922-9292.