2013 WVHOA Newsletter

MARCH 2013

WEST VALLEY HOMEOWNER ASSOCIATIONS

www.wvhoa.org

April's Luncheon Meeting: Meeting Your Fiduciary Responsibility

The next meeting of the West Valley Homeowner Associations will be April 3 – Meeting Your Fiduciary Responsibility Through Separation of Community Association Duties. WVHOA Secretary/Treasurer, Mitzi Mills, will be discussing board members' legal obligations to the association vs. the manager's or management company's role.

We'll be meeting on April 3 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 3:00 p.m. on Friday, March 29.

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.

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 April 3!

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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.

ANNUAL LEGAL SEMINAR - NATIONAL HOA CASE UPDATE

WVHOA Vice President and Attorney Curtis Ekmark was WVHOA's guest speaker. He provided a review of association-related cases around the country and how these cases affect associations in Arizona.

The first case was in North Carolina in which an association amended its documents. A homeowner claimed the amendment was invalid because it benefited the board members. The court ruled that the amendment was valid and that the board had obtained a written legal opinion supporting it. The result of this case emphasizes the importance of association boards obtaining expert opinions when needed.

In New Hampshire, an association went to court to ask the court to amend the CC&Rs because it could not get the amendment passed among the members. The court ruled that it was not willing to do this because the documents specified a certain process and percentage approval needed from the members. The court would only consider doing this if it were to correct a mistake in the documents.

There was a similar case in California in which the association asked the court to amend the documents because California has a statute that states that the association can request the court to amend their documents if the association cannot get the number required to amend among the members. The key to this case is that California has a specific state statute that allows the court to consider amending the documents. Mr. Ekmark encourages SCOHA members to contact their state legislators to tell them that the associations need legislation to allow them to amend their documents.

In Utah, a developer wanted to amend the documents at a time when not all of the lots were annexed. The developer asked the court to interpret the governing documents because it did not understand whether the documents stated that amendment approval required 80% of the total lots or 80% of the lots annexed in the future. This illustrates the importance of reading the governing documents and to clearly understand their meaning when attempting to amend the documents.

Another case pertained to a developer that developed a community to a certain extent and then went bankrupt and abandoned the property. A second developer purchased the remaining lots and finished the development. The question for the court was what rights does the second developer have? Is it considered the declarant or just an owner of a certain number of lots? We have encountered similar situations in communities within Arizona. If a community encounters this situation, it should consult its attorney for assistance in interpreting the documents and statutes to determine what rights a subsequent developer has within the community.

In Nebraska, an association claimed that its assessment lien was superior to a government's lien because the association's lien was created at the time the declaration was recorded. The court ruled against the association, stating that the association's lien was created when the assessments became past due.

An Indiana association was charging administrative fees relating to collecting past due assessments. A lawsuit was filed against the association and the court ruled against it saying that it considered the administrative fee an abusive junk fee and added monetary penalties against the association because this fee violated the Fair Debt Collection Practices Act. Mr. Ekmark emphasized the importance of ensuring that fees that the association charges are authorized by the governing documents.

In Connecticut, a delinquent homeowner claimed a defense that he shouldn't have to pay assessments because the association hadn't performed its maintenance responsibilities. The court rejected the owner's defense saying it doesn't matter whether or not the association has performed its maintenance responsibilities because the assessments are like taxes and must be paid regardless.

Regarding charging owners fees relating to an association's bulk contracts, a Pennsylvania court held that the association was not authorized to charge these amounts because it did not have the authority to do so in the documents. Again, it's important to make sure that your association has authority to charge fees in the CC&Rs.

In Rhode Island, a condominium declaration stated that the declarant had a right to withdraw property from the condominium association. A homeowner decided that's what he would do and this resulted in a lawsuit. The court ruled that the owner did not have the right to withdraw his condo from the association; only the declarant had that right.

A condominium association in Missouri had multi-story buildings with elevators. The elevators in two of five buildings broke down and the association charged the owners of those two buildings for the cost to repair the elevators. Those owners sued the association, and the court ruled in the owners' favor because the documents stated the common expenses, such as elevator maintenance and repair, shall be shared by everyone.

Another case illustrated how statutes should be interpreted when there are conflicts. For instance, if there is a conflict between the Condominium Act statutes and the Nonprofit Corporation Act statutes, the more-specific statutes control (in this illustration, the Condominium Act statutes would control).

There were two cases that pertained to owners offering day care services within their homes in their associations. The question before the courts was whether the day-care service violated the single family use or business restrictions. The answer depended upon the governing documents. In the two cases decided last year, the courts ruled that the day-care services were businesses and violated the no-business and family-use restrictions.

Similarly, in Louisiana, a court ruled that art classes are considered a business and violate the no-business restriction.

In Alaska, an association's CC&Rs stated that owners could not run a business out of the home. A homeowner was advertising his unit for short-term rental and the association

sued the owner claiming that the short-term rental was a business. The court rejected the association's position saying that just renting was not enough to constitute a business. The court looked at the activities of the tenants. If the tenants were just living in the home, it was not considered a business.

A homeowner in an association in New York built a wall around his pool, but it encroached the setback. He claimed he needed the wall for safety reasons concerning the pool. The association sued the owner and the court ruled in favor of the association. It said that the owner could have moved the pool so that the safety wall would not have encroached the setback.

Oregon has a statute that sets forth the process to remove association directors from the board. A group of homeowners followed the statutory process to remove directors, but the association claimed that there was a different process that was to be followed in the bylaws and therefore the homeowners' removal process was invalid. The court ruled in favor of the homeowners stating that the statutory process was the one that must be followed.

There were a couple cases involving owners with disabilities. In the first case, the owner insisted she was allowed to have a dog because she was disabled, but she refused to provide evidence of the disability. The court ruled in favor of the association because the homeowner had to offer evidence of her disability because her disability was not obvious. An association may request this information only if the disability is not obvious. In a second case, it was ruled that just because an owner was disabled, he still couldn't have a bunch of junk on the patio.

In Indiana, an association approved an owner's architectural control application, and the neighbor of the owner sued the association. The court ruled in favor of the association because it concluded that the association's documents set forth a specific process for architectural control applications and the association followed that process.

A homeowner in Washington started building his house six feet taller than the association's height restriction. The association told him he was in violation, but the owner completed construction anyway. In the suit, the owner cited a provision in the CC&Rs that stated that in the event someone violates the CC&Rs, the association must sue the owner before construction ends. Since the association did not do that in this case, the court ruled in favor of the owner.