

2013

WVHOA Newsletter

OCTOBER 2013



WEST VALLEY HOMEOWNER ASSOCIATIONS

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November's Luncheon Meeting: Litigation Issues in HOAs

The next meeting of the West Valley Homeowner Associations will be November 6 - Litigation Issues Facing HOAs. WVHOA Vice President, Curtis Ekmark, will review the latest litigation trends within HOAs.

We'll be meeting on November 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 3:00 p.m. on Friday, November 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.

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 November 6!

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.

CC&R ENFORCEMENT

Attorney Adrienne Speas with the law firm of Ekmark & Ekmark, was our guest speaker.

The purpose of enforcement is to make your communities better.

In an Arizona case, the court did not want to entertain an enforcement lawsuit if there was no harm to the community. Therefore, you need to evaluate the violation and determine if there is harm to the community. On the other hand, this must be balanced with laws that say the association has a duty to enforce the documents. Review your association documents to determine whether you have a duty to enforce or a right to enforce.

The key is to balance what the documents say with whether there is a harm to the community.

What does an association enforce? It enforces the CC&Rs, the statutes, the rules, and the architectural guidelines.

There could be provisions in your CC&Rs that may no longer be valid because new laws have been enacted that overrule the CC&Rs. Keep up-to-date on all new legislation. For example, there are state statutes that indicate the procedure to follow if a homeowner sends a written request for information on the violation.

You also need to ensure that the rules and regulations are proposed properly. For example, the association's CC&Rs may indicate that the association has the right to adopt rules and regulations related to the common areas and related to the conduct of the members. If your documents indicate this, you cannot draft a rule that gives the association the ability to remove something from an owner's lot.

Self-help, fines, injunctive relief and recording a notice of violation are the main methods of enforcement. In order to use these methods, you need to carefully review your documents to determine if you have the authority for these enforcement methods and the procedures to follow.

Once an owner receives notification of a violation, he or she will typically claim some common defenses, such as waiver/abandonment, establishment of precedent, oral approval or deemed approval. The association can usually counter these defenses.