



# LEADERSHIP MONTHLY

A NEWSLETTER FOR ASSOCIATION OFFICERS AND DIRECTORS

---

## Lawsuit Is Riskiest Option

By Rosalie Robles Crowe, Special for The Republic (Reprinted from the Jan. 8, 2000 The Arizona Republic)

**QUESTION:** I believe that my wife and I have been singled out for harassment by our community's management company, and I'm considering suing.

Over the past few years, we've received about 75 letters about overnight parking in front of my house, and most recently, a lien has been placed on my property.

I asked for an exception to the rule but was denied. Then I asked that the board define "overnight." No one could. The management company representative just repeated that overnight meant overnight, while a committee member said the rule covered from 6 p.m. until the next morning.

Few of the letters I've received listed specific cars. Others have listed cars and license numbers that don't belong to me. Plus, the complaints are inconsistent. Weeks will go by with no complaint, and then there is a barrage of letters telling me we're being fined.

I keep my home very neat and clean, with the grass always mowed and the bushes trimmed. Other yards are poorly maintained, and some disobey rules about leaving basketball hoops out and disregard landscaping directives.

Do I have any options, other than filing a lawsuit?

**ANSWER:** It is reasonable for any resident of a planned or condominium community to expect the association — either on its own or through the management company — to enforce the rules and regulations uniformly. It's also reasonable to expect the association to define "overnight."

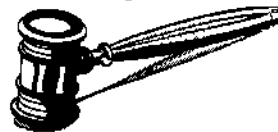
In fact, the definition should be in the documents and, Scottsdale attorney Curtis Ekmark said, "If the association documents do not provide a specific answer, then the board should pass a resolution setting forth specific parameters so that all association members know the exact rule." Ekmark, a member of the firm Ekmark & Ekmark, is an association law attorney and is past president of the Central Arizona Chapter of the Community Association

Institute (CAI). He also serves on the board of the Scottsdale Council of Homeowners Associations.

Uniform enforcement also means enforcing all the rules and treating all residents alike, he said. That said, however, the fact that your board is apparently lax in enforcing some of the rules doesn't give you or anyone else an excuse to ignore other rules.

When you signed the purchase agreement for your home, you also were signing your acceptance of the association's regulations. According to Tucson attorney Carolyn Goldschmidt, you must recognize your legal responsibility to abide by those governing documents. Goldschmidt is an association law attorney and real-estate specialist, and is president of the CAI Southern Arizona Chapter.

"Anyone who feels that the rules are unfair or unenforceable should take steps within the framework provided by the law to get the documents changed," she said.



You're going to have to put your frustrations aside and find a way to work with the

board to make the changes necessary to see that rules not only are enforceable but also enforced fairly, because the board does have the authority to fine you and put a lien on your property.

Any homeowner in your position has options, some of which you already have explored, including meeting with the board, getting a lawyer and either suing the board or waiting to defend yourself in front of a judge when the board sues you. The latter two are risky, though, because you never know what a judge will decide, and if you lose the lawsuit, you could end up having to pay all legal expenses, including the association's.

The only other options you have is to try again to work with the board or, failing that, rally support to elect new directors. Your final option, of course, is to move. Then, wherever

you move, make certain the community's documents contain regulations and policies that you can live with.

If I sound flip, that's not my intention. It's just that few people realize exactly what they face when buying a home that's part of a homeowners association.

In fairness to homeowners associations, let's talk a moment about those no-parking rules that so many homeowners try to circumvent.

What most people fail to realize is that in most new communities the streets are narrower than the streets in older parts of the city where the residential neighborhoods are subject only to city and town ordinances, not homeowners associations. The no-parking rules are not so much aimed at preserving aesthetics as they are at adhering to a city's fire code. If a community fails to keep the streets open and a firetruck or other emergency vehicle is unable to get through, the association could face a massive lawsuit. That means that individual members will feel the hurt in their wallets.

Tucson attorney Goldschmidt says that failure to enforce such rules "is often a symptom of growing apathy." And apathy in a community can lead to terrible things, including declining property values.

If you are unable to get the board to sit down with you to work out a resolution to your differences, my suggestion is that you consider getting help from a mediator. Contact Solve It! Community Mediation Services for more information. The phone number is (480) 503-6769. You also can reach the service by fax at (480) 497-4943. Goldschmidt may be reached at 1-(520)-622-5145 in Tucson. Ekmark's phone number is (480) 922-9292.

---

*If you have a multihousing question, write to Rosalie Robles Crowe at AZ Home, The Arizona Republic, P.O. Box 2245 NF-18, Phoenix, AZ 85002. Of you can reach her at [rrcrowe@earthlink.net](mailto:rrcrowe@earthlink.net) via e-mail.*

## Are Your Homeowners' Association's Board Meetings Held in Compliance with Arizona's Open Meeting Law?

Sam, Lila and Jack visited over the holidays during a party hosted by Jack and his wife for friends and neighbors. The three discussed current events, weather, and issues facing their neighborhood's homeowners' association. Specifically, they chatted about the potholes in the streets and what they thought should be done about them. They also discussed complaints that they had heard from neighbors about the property manager, and whether they thought she should be replaced. Finally, they shared thoughts about complaints from neighbors of the Smiths about noise levels of the seven Smith children, and whether there should be rules about quiet hours. Sounds like an average conversation, right . . . nothing illegal about it, right? Wrong. Sam, Lila and Jack are directors on their planned community's association board. Because three directors constitute a quorum under the association's bylaws, two of the three (sic) discussions violate the open meeting laws applicable to the boards of planned communities in Arizona.

Arizona has an open meeting law applicable specifically to meetings of the association boards of planned communities. (Arizona Revised statute ("A.R.S.") § 33-1804.) Condominium associations are governed by similar provisions. (A.R.S. § 33-1248.) The planned community law provides that "all meetings of the . . . board of directors are open to all members of the association and all members so desiring shall be permitted to attend and listen to the deliberations and proceedings . . . ." (A.R.S. § 33-1804(A).) Note that meetings of the association members themselves are also subject to open meeting laws. (A.R.S. § 33-1804(A).) Members are only granted rights to attend and listen to the meeting. Accordingly, an association member in attendance at a board meeting is not allowed to speak unless a majority of a quorum of the board expressly permits member participation by a vote.

For certain subjects, an association board may conduct a closed meeting to which association members need not be invited or permitted to attend. Those subjects are designated by the statute:

- Personnel matters;
- Legal advice from an attorney;
- Pending or contemplated litigation; and
- Pending or contemplated matters relating to enforcement of the association's documents or rules.

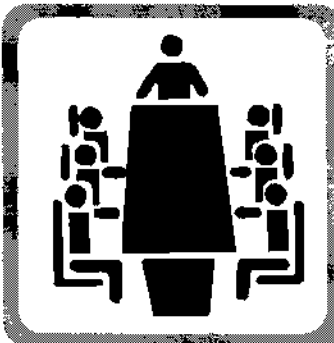
A board must carefully consider and categorize open and closed meeting subjects, and a closed meeting may be held only as to those agenda items that are closed meeting subjects. At our holiday party above, the complaints regarding the property manager would likely constitute a personnel issue, which would properly be the subject of a closed meeting. The remaining issues about maintenance and the adoption of new rules are open meeting subjects.

Sam, Lila and Jack defend their conduct because they made no decision during their informal gathering. The key, however, is that the statute applies to both "deliberations and proceedings." According to a 1997 Arizona Attorney General opinion, "informal meetings may allow crystallization of decisions to a point just short of ceremonial acceptance." Ariz. Op. Atty. Gen. No. 197-012 (August 18, 1997). Further, "discussion that takes place at an informal meeting on an issue that will later come before the Board will limit the discussion at a subsequent formal meeting on the issue, thus preventing association members from hearing the policy, motivations, and other important factual information involved in the Board members' decision." While that attorney general opinion may not be controlling, because the attorney general is not authorized to enforce either the homeowner or condominium association open meeting laws, the analysis provides guidance as to what an Arizona court might do when faced with the issue. A board is well advised to take care to ensure that exchange of facts that relate to an open meeting subject occurs only at a properly noticed open meeting.

What is proper notice? A board must give association members proper advance notice of the time and place of all board meetings as provided for in the association's articles of incorporation or bylaws. If those governing documents are silent, notice must be given at least forty-eight hours in advance by newsletter, conspicuous posting or other reasonable means. (A.R.S. § 33-1804(C).) It is advisable for a board to establish a set date, time and location for regular board meetings, i.e., the second Tuesday of every month at 7 p.m. at the club house, and circulate that information. It is also a good idea for a board to establish a method of informing members when that schedule has to be modified, for example, a mailing or conspicuous posting near the mail boxes. No notice is required if emergency circumstances require board action before notice can be given.

Any member who learned of Sam's, Lila's and Jack's discussions about maintenance and new rules would have a basis for challenging the conduct as a violation of the homeowners' association open meeting laws. Whenever a quorum of directors gathers, whether formally, or informally, they are advised not to discuss open meeting subjects unless the gathering is a properly noticed board meeting.

- Patricia A. Mancabelli



*This newsletter is provided for informational purposes only and is not meant to take the place of individual legal advice. Please consult a knowledgeable attorney regarding your specific legal needs. For additional information regarding condominium and homeowners' association law, please contact Eric M. Jackson, Wayne L. Gardner, David L. Weed, Roger R. Foote, Patricia A. Mancabelli or James L. Tanner at 480.464.1111.*



For Immediate Release from The Arizona State Land Department, Bob Celaya, Forest Health Specialist.

Conifer or pine aphids are very abundant early this year in the Prescott area, due to the mild, dry winter we are experiencing. They have been mainly identified on pinon pines but they can also be found on ponderosa and ornamental pines, white fir, and blue spruce.

According to the Arizona State Land Department, conifer aphids are sapsucking insects which range from almost colorless to green, yellow, gray, or black. They pierce the needles, twigs, and branches of conifers and suck out large quantities of sap expelling excess amounts. It is this excess amount of sap called honeydew that can be detected on trees in the Prescott area.

The honeydew rains down on lower branches, often spots or forms a glistening coat on the foliage, cars or other objects located below. Most of the aphids identified are gray in coloration and are mainly located at the tips of the affected branches.

The feeding activity of the aphid is rarely damaging to the tree. Discoloration of older needles may occur later this year. Ants are sometimes found with aphids, protecting them, and feeding on the honeydew and are helpful in identifying infested trees.

Aphid populations are often held in check by natural enemies, including lady beetles and lacewings, various parasitic flies and wasps. However, it may be a little early for some of these insects to be active. If you want to apply a treatment and the trees are small enough, direct a strong stream of water to the affected parts of the tree to dislodge the aphids. Insecticidal soaps are also useful and will not harm the natural enemies.

Absolutely consider slow, deep, and infrequent watering of your affected trees around your home, starting now, with a properly installed and maintained drip system, or with a soaker hose placed around the dripline of the tree. This is very critical this year due to the second consecutive warm and dry winter we are experiencing. Continue watering until "monsoon" rains are well established.

The conifer aphids in the Prescott area are not expected to cause any serious damage to the pines and will decline in numbers with the advent of summer rains. However, it is very important that you replace the moisture loss caused by the aphids.

For further information about this insect and other forest health concerns, contact: Arizona State Land Department, 809-C Gail Gardner Way, Prescott, AZ 86305, Phone: (520) 778-9567.

### How to Run a Good Meeting (Source: Financial Times)

Here are some tips on how to run a meeting:

- **Don't compete** with group members. Give their ideas precedence over yours.
- **Listen to everyone.** Paraphrase, but don't judge.
- **Don't put anyone on the defensive.** Assume that everyone's ideas have value.
- **Control the dominant people** without alienating them.
- **Realize that your interest and alertness are contagious.**
- **Keep all participants informed** about where they are and what's expected of them. Keep notes on flip charts or a board that everyone can see.
- **Check with the person who owns the problem** to find out if an idea is worth pursuing or if a proposed solution is satisfactory.
- **Give others a turn at running the meeting.** Those who learn to lead learn how to participate.

## HOUSING MATTERS

### MULTIHOUSING CONTACTS

Associations or individual homeowners looking for help in improving their community's enforcement policies or communications between the board and members may contact any of the following organizations.

- Central Arizona Chapter of the Community Associations Institute, (480) 609-3777.
- Southern Arizona Chapter of the Community Association Institute, Tucson, 1-(520)-622-5145.
- National Institute of Community Management, 1-800-387-1099 or (602) 381-1099.
- Scottsdale Council of Homeowners Associations, (480) 994-4386.
- Southeast Valley Neighborhood Leadership College, (480) 503-6761.
- Solve It! Community Mediation Services, (480) 503-6769.

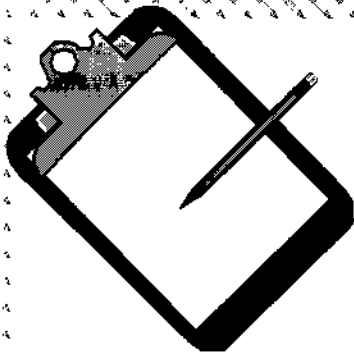


## PEARLS OF WISDOM

### Develop A Successful Budget

1. Obtain input from owners, board members, committees, and management.
2. Conduct research to ensure the budget is accurate.
3. Develop a month-by-month evaluation — don't just divide by 12.
4. Talk with contractors to estimate costs.
5. Be realistic.
6. Raise assessments if necessary.
7. Be straightforward about it — don't use gimmicks or emotional appeals.
8. Plan for the future.
9. Look for ways to cut expenses, but don't reduce the level of services or quality without telling the owners.
10. Communicate the budget to members.

# CENSUS 2000



Census 2000 will be the information cornerstone for the next century. Billions of dollars of federal, state and local funds will be spent on thousands of projects across our nation. How and where that money is spent depends on the census numbers. Census 2000 is your chance to make sure that the new century begins with an accurate and complete picture of your community.

Some people consider participating in the census as important as voting. But, unlike voting, the census touches everyone living in the United States — regardless of age or citizenship status.

The goal of Census 2000, just like previous censuses, is 100-percent participation by every man, woman and child living in the United States. However, experience tells us that some people will be missed. Approximately 4 million people were missed during the 1990 census. As many as half of these missing persons were under the age of 18 and many of these children were under the age of 10.

It has been estimated that just in federal funds alone each person is worth \$165.00 per year over the next ten years. A family of four that fails to be counted is a loss of \$6,600 to our community, and that is not including their worth in state funding. The census needs information about everyone.

**The Future Is In Your Hands—Don't Leave It Blank!**

**HOMEOWNERS ASSOCIATION  
MANAGEMENT COMPANY  
131 WEST NAVAJO — SUITE D  
PRESCOTT, ARIZONA 86301  
(520) 776-4479  
hoamco@hoamco.com**