



**SHAW & LINES, LLC**

ATTORNEYS AT LAW



# **THE FIVE MOST IMPORTANT CONCERNS FOR HOAS RIGHT NOW**

***THIS COURSE IS APPROVED BY COMMUNITY ASSOCIATION  
MANAGERS INTERNATIONAL CERTIFICATION  
BOARD(CAMICB) TO FULFILL CONTINUING EDUCATION  
REQUIREMENTS FOR THE CMCA® CERTIFICATION.  
WWW.CAMICB.ORG.***

# The Top Legal Issues



- **COVID-19 Related Issues.**
- **Annual Meetings, On-Line Voting, Mail Ballots and Agendas.**
- **HOA Insurance Issues.**

# The Top Legal Issues



- **HOA Corporate Tune-Up.**
- **HOA Enforcement Issues.**

# COVID-19 RELATED ISSUES



- Current State of COVID-19 Regulations.
- COVID-19 and HOA Meetings.
- COVID-19 and HOA Common Areas.
- COVID-19 and HOA Assessment Collection/Enforcement.

# Annual Meetings



- **HOW OFTEN SHOULD ANNUAL MEETINGS BE HELD?**
- Pursuant to A.R.S. §10-3701, HOAs must hold an Annual Meeting at least once a year but no less than 15 months after the HOA's last Annual Meeting.

# Annual Meetings



- **WHAT ARE THE NOTICE REQUIREMENTS FOR AN ANNUAL MEETING?**
- Annual Meeting notice requirements are usually discussed in the HOA's Bylaws. If the HOA's Bylaws are silent, A.R.S. §10-3705 requires at least ten (10) days notice.

# Annual Meetings



- **PURPOSE OF AN ANNUAL MEETING.**
- To Conduct Member “Business”;
- To Elect Members to the Association’s Board of Directors; and
- To Allow the Members to Address their Association.

# Annual Meetings



- **METHODS OF VOTING – ABSENTEE BALLOT.**
- When drafting an absentee ballot, you must keep in mind the requirements of A.R.S. §33-1250 (Condominiums) and A.R.S. §33-1812 (Planned Communities).



# Mail Ballots and On-Line Voting



A.R.S. §33-1250 (Condominiums) and A.R.S. §33-1812 (Planned Communities) now allows for on-line voting.

# Annual Meetings



- Create an Annual Meeting Agenda.
- Take and ratify Annual Meeting Minutes.
- Do not restrict the participation of Members at the Annual Meeting.

# What Types and Amounts of Insurance are Required



- Most CC&Rs will have a section dedicated to insurance issues and will discuss what types and amounts of insurance is required.
- Condominium associations must also look to A.R.S. §33-1253, which discusses the types of insurance and coverage amounts an Arizona Condominium is required to obtain.

# What Types and Amounts of Insurance are Required



- Generally, there are three main types of insurance:
  - Director's and Officer's Liability insurance;
  - Generally Property Casualty Insurance; and
  - General Liability Insurance.

CC&Rs may require other types of insurance, such as Workman's Compensation insurance.

# HOA INSURANCE



## Liability Issues:

Make sure to give the broker or agent a copy of all association documents and all previous insurance policies.

Make sure that you not provide an opinion on any policy being presented or recommend one policy over another.

# HOA INSURANCE



## Liability Issues:

Make sure that the Broker or agent presents the bid and answers all questions concerning the bid;

Make sure to read the insurance policy or obtain a legal opinion to insure all requirements are met.

# HOA INSURANCE



## Liability Issues:

If you are not sure if you have a claim or potential claim, call your insurance broker, agent or attorney.

Failure to properly tender a claim could result in lost coverage.

Failure to properly tender a claim could bring liability upon an manager.

# HOA ENFORCEMENT



- Arizona Courts have held that Associations, in certain circumstances, may be required to enforce restrictions.
  - See e.g., Gfeller v. Scottsdale North Townhomes Ass'n, 193 Ariz. 52 (App. 1998); Johnson v. Pointe Community Ass'n, 205 Ariz. 485 (App. 2003).
- Cases suggest that a HOA may face liability where it is required to enforce the restrictions, but fails or refuses to do so.



## HOA ENFORCEMENT FINES



- Statutory Requirements for Fines – **A.R.S. 33-1803(B)** Planned Communities – **A.R.S. 33-1242(A)(11)** Condominiums:
  - Fine must be “reasonable;” and
  - The Association must provide proper notice to the owner and an opportunity to be heard.

## HOA ENFORCEMENT FINES



- There is no guarantee that fines are reasonable. It's always up to the Court.
- This leads to confusion and uncertainty.
- Even if the fines are valid, how does the Association collect the fines?

# HOA ENFORCEMENT FINES



- Fine Policy Suggestions:
- Avoid escalating fines; i.e. \$50, \$100, \$150 because escalating fines may not be reasonable.
- Consider having different fines for different violations; i.e. a lower fine for minor violations and a higher fine for major violations.

# HOA ENFORCEMENT FINES



- Fine Policy Suggestions:
- Have the Association's attorney review your fine policy. One size does not fit all!
- Review the HOA's fine policy every year.

## **HOA Corporate Tune-Up Reporting Requirements**



- Update Statutory Agent Information on ACC Website.
- Update Business Address of HOA on ACC Website.
- Update/remove Notice of Community Association with County Recorder.

## **HOA Corporate Tune-Up Reporting Requirements**



- File the HOA's Annual Report.
- File the new ACC Required Form (**A.R.S. § 10-11622**) with the Annual Report containing the name, address, telephone number, website (if applicable), fax number and e-mail address of the HOA and the designated agent, manager or management company of the HOA.

# **HOA Corporate Tune-Up Documents and Records**



- Make sure the HOA has all of the Governing Documents and other records of the HOA “readily available.”
- When was the last time the Governing Documents and policies and procedures were reviewed for legal appropriateness?

# **HOA Corporate Tune-Up Documents and Records**



- Review financial information;
- Are the signature cards valid;
- Has the Board reviewed the actual bank statements and not just a summary;
- Has the Association's Banker/Investment Advisor visited the Board.



# Questions?



**If you want a copy of this Power Point, please  
e-mail [mary@shawlines.com](mailto:mary@shawlines.com)**

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# SHAW & LINES, LLC

ATTORNEYS AT LAW

## **Augustus H. Shaw IV, Esq., CCAL**

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E-mail – [ashaw@shawlines.com](mailto:ashaw@shawlines.com)

Website – [www.shawlines.com](http://www.shawlines.com)

### **EDUCATION**

**University of Arizona James E. Rogers College of Law - J.D. 2000**

**University of Arizona - B.A. 1996**

### **PROFESSIONAL LICENSES**

Member, State Bar of Arizona.

Member, U.S. District Court Bar for the District of Arizona.

Member, State Bar of Nebraska.

Member, U.S. District Court Bar for the District of Nebraska.

Member, United States Tax Court Bar.

### **PROFESSIONAL LEGAL EXPERIENCE**

#### **Shaw & Lines, LLC**

***Founding Member and Managing Member (April 2005 – Present)***

Provide legal advice to Homeowner Associations, Property Owner Associations, Office Condominium Associations and non-profit corporations in a variety of general real estate and corporate transactions. Specifically, creation of corporate entity for homeowners' associations, creation and interpretation of governing documents of homeowner associations, creation and negotiation of complex sales and lease agreements, creation of land conveyance documents, representation of home owner and property owner associations in zoning matters, representation of homeowners' associations in collection litigation matter and document enforcement matters.

### **CONTINUING LEGAL EDUCATION SEMINARS TAUGHT**

February, 2020 – State Bar of Arizona CLE Panel Entitled *Fundamentals of Administrative Adjudication in Homeowners Association (HOA) Disputes*.

January, 2020 - Community Associations Institute College of Community Association Lawyers National Law Seminar CLE Entitled *Vexatious Litigants – How to Handle the Frivolous Filer*.

January, 2019 - Community Associations Institute College of Community Association Lawyers National Law Seminar CLE Entitled *ETHICS: Call to Duty: Ethics and Politics Concerning Duties Owed*.



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## ATTORNEYS AT LAW

February, 2018 - Community Associations Institute College of Community Association Lawyers National Law Seminar CLE Entitled *Navigating the Nuances of the Fair Housing Act*.

June, 2017 - Arizona State Bar Convention CLE Panel Entitled *Advanced Issues in Land Use: Navigating the Dangers of Deed Restrictions in Residential and Commercial Development*.

January, 2017 - Community Associations Institute College of Community Association Lawyers National Law Seminar CLE Entitled *The Insurance Defense Dilemma; Conflicts of Interest Regarding Insurance Defense Under a Reservation of Rights*.

May, 2015 - Community Associations Institute National Annual Conference Seminar Entitled *I am the Association! How to Handle the Overbearing Board Member*.

November, 2014 – State Bar of Arizona CLE Seminar Entitled *Let Slip the Dogs of Peace: The ADA, Fair Housing Act and the Use of Service Animals to Help America's Returning Veterans*.

April, 2013 - Arizona Association of Landlord-Tenant Attorneys CLE Seminar Entitled *An Overview of Property Tax Appeals, HOA Laws and Remedies When a Foreclosure Goes Wrong*.

February, 2011 - Community Associations Institute (Central Arizona Chapter) Trade Show Seminar Entitled *Going Rogue, What to do with the Rogue Association Board Member*.

May, 2010 - Community Associations Institute National Annual Conference Seminar Entitled *Board Member Decision Making – The Business Judgment Rule Plus*.

January, 2010 - Community Associations Institute College of Community Association Lawyers National Law Seminar CLE Entitled *Board Member Decision Making – The Business Judgment Rule Plus*.

January, 2007 - Lorman Educational Services Seminar Entitled *Issues Concerning the Development, Creation and Operation of the Arizona Office Condominium Association*

June, 2006 - Arizona Association of Community Managers Seminar Entitled *Changes in the Laws Affecting Community Associations*.

May 2005 - Maricopa County Bar Association Seminar Entitled *How to Collect Assessments and Enforce Restrictions Concerning Homeowner Associations*.



### ARTICLES AND PUBLICATIONS

Winter (2018) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *Can a HOA Waive its Rights to Enforce the CC&Rs.*

Spring (2018) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *Going Paperless: The Legal Requirements of HOA Digital Record Keeping.*

Fall (2017) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *Reserve Accounts 101 – What They Are, How They Work and Are They Required.*

Spring (2017) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *You're Hired! Important Considerations Concerning HOA Service Providers.*

Spring (2016) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *There is Method to the Madness: How to Choose the Best Method of Enforcement.*

Fall (2014) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *The Importance of Trade Names and Trademarks in the Social Media Age.*

Spring (2013) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *The Hatfields and the McCoys: HOA Involvement in Neighbor Disputes.*

September/October (2012) Community Associations Institute National Magazine *Common Ground* Article Entitled *Curmudgeon Cure.*

Issue 4 (2011) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *Association Record Keeping in the Digital Age.*

Issue 1 (2011) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *We Are All in This Together - Sustaining Members' Interest in Their Community Association.*

Issue 4 (2010) Community Associations Institute Central Arizona Chapter Magazine *Community Resource* Article Entitled *Why HOAs are Good in a Bad Economy.*



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Issue 2 (2010) Community Associations Institute Central Arizona Chapter Magazine  
*Community Resource* Article Entitled *The Ins and Outs of Owner Bankruptcy – What  
Community Associations Need to Know.*

Columnist for the weekly Column entitled “Ask the HOA GUY” published by the  
*Arizona Republic* and the *East Valley/Scottsdale Tribune* (2004-2006).

## **LECTURER FOR THE FOLLOWING HOA ACADEMIES:**

2010-Present City of Scottsdale, AZ HOA Academy.

2010-Present City of Chandler, AZ HOA Academy.

2010-Present City of Casa Grande, AZ HOA Academy.

## **AWARDS AND ACHIEVEMENTS**

2010 Leadership Centre Brian L. Zemp Community Leadership Award.

2008 Member – Community Association Institute College of Community Association  
Lawyers.

2006 Leadership Centre Instructor of the Year.

## **SERVICE TO COUNTY**

Honorably discharged from the U.S. Navy, August 1992.

## **SERVICE ORGANIZATIONS**

Board Member, Tempe Preparatory Academy (2018 to Present); Member, Community  
Associations Institute College of Community Association Lawyers Board of Governors  
(2017); Vice President (2014 - 2015), Member of the Board of Directors (2013 - 2016) of  
the Central Arizona Chapter of Community Associations Institute (CAI); Member, State  
Bar Committee of Minorities and Women in the Law (2002-2003); Vice Chair, City of  
Tempe Redevelopment Review Commission (2003-2004); Secretary, Maricopa County  
Bar Association Foundation (2002-2003); Member, Maricopa County Board of  
Adjustment (2005-2006); Member, Maricopa County Community Development Advisory  
Commission (2005-2006); Member, Maricopa County Merit Commission (2006); Board  
Member, The Leadership Centre (2002- Present); Member, City of Tempe Transportation  
Commission (2009-2011); First Vice Chairman, Arizona Republican Party (2010 –  
2012).