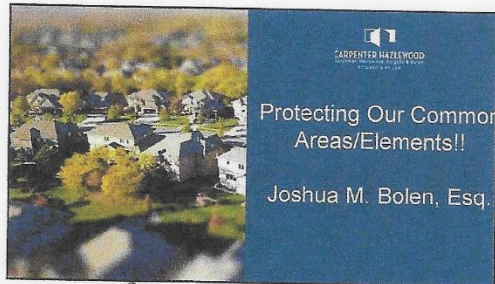


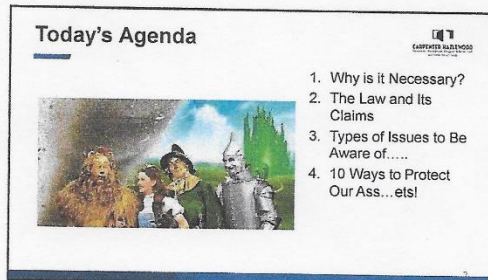
PROTECTING OUR COMMON AREAS/ELEMENTS

8/8/2023



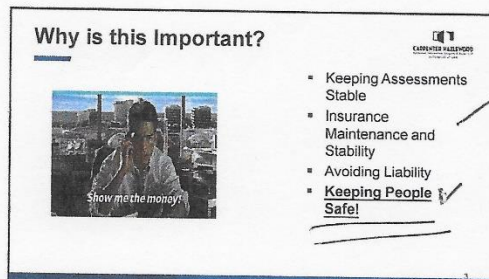
All issues are document specific.

all changes are about & depend on notice easements - look for recording number



Obligated to maintain

Avoid Liability



Condos are worst at maintaining Assets, can't even get insurance coverage

Moral obligation.

A Whole Bunch of Duty....




- Contractual Duties** 1
 - CC&Rs
 - Governing Documents
 - Bylaws, Plans, Rules/Policies
 - Other
- Statutory** 2.
 - Planned Community/Condo Act
- Common Law** 3.
 - Martinez v. Woodmat
 - 930 P.2d 485, 197 Ariz. 408 (1997)

cc&rs are a contract!
w/ obligation
rules and regs - are a duty

rules & reg, Policy, procedures
don't.

Bylaws & cc&rs must be recorded


Contractual & Statutory Duty



- CC&RS
- Other Governing Documents
 - Plans are Important
- Agreements
 - Maintenance
 - Right-of-Ways
 - Easements
 - Other
- Statutory
 - Planned Community Statutes
 - Condo Act
 - Non-Profit

William
Repensek

Statutory Board Duties



- Legal Duties ARS § 10-3830(A) - Good Faith, Duty of Care, and Duty of Loyalty
- "A. A director's duties, including duties as a member of a committee, shall be discharged:
 - In good faith.
 - With the care an ordinarily prudent person in a like position would exercise under similar circumstances.
 - In a manner the director reasonably believes to be in the best interests of the corporation.

Duties are to the Corporation
Not the members

Martinez v. Woodmar IV



- Guest of a Unit was Injured in a Shooting
- Association was Aare of Criminal Activity on Common Area
- Budget Constraints - Association Reduce Security Patrol
- Shooting Occurred One Hour Prior to Patrol
- **HOLDING - Association Liable**
- An association's duty was to maintain the areas under its exclusive control (the common areas) in a safe condition and protect owners, tenants, and their guests from dangerous conditions or activities. (i.e. a Duty of a Landlord)

Changes w/o notice a
bad thing

Most Popular Claims



- **BREACH OF CONTRACT**
 - (1) Contract, (2) Terms Breached, & (3) Damages
- **BREACH OF DUTY**
 - (1) Duty was Owed; (2) Duty was Breached, (3) Causation (breach caused damage); & (4) Damages.
- **NEGLIGENCE (Tort)**
 - (1) Duty; (2) Breach; (3) Causation; & (4) Damages
- **DAMAGES**
 - Direct - Personal and Property
 - Indirect - Consequential
 - Joint Liability - Condo Act



Common Area Liability Issues



Loose Tiles, Sidewalks, Lack of Lighting, Golf Balls, Car Accidents, Holes, Pool Decking, Dog Bits, Team Sports, Bounce Houses, Roof Tiles, Bees, Rattle Snake Bites, Wildlife, Neighbor Fights, Drownings, Playground Injuries, Bridge Fall, Tennis Court Walls, Burns, Curbs Trips, Reclaimed Water, Emergency Vehicle Access, Fires, Floods, Cat Scratch, Over Serving, Sports Injury, Dunk Tank, Vendor Damages, Tree Branches, Chemicals, Railings, Improper Drainage, Wall Collapse, Tree Roots, Gophers, Sinkholes, Parties, Crime, Drugs, Vandalism, Assault, Food Poisoning, etc.



Common Element Maintenance Liability



- LEAKS, LEAKS, LEAKS, Gates, Balconies, Railings, Drainage, Flooding, Access, Pipes Busts or Clogs, Landscaping, Windows/Doors, etc.
- Understand Maintenance v. Insurance



10 TIPS TO PROTECT COMMON AREAS/ELEMENTS



Tip #1.....



**IF YOU KNOW ABOUT IT-
HANDLE IT!**
"Notice is Everything"

Notice is a legal term.

Tip #2.....



RELY ON EXPERTS!!!

"Shift Risk to Them"

"Safe Harbor – A.R.S. 10-3830"

"Figure Out Issue and Plan"

Tip #3.....



CONDUCT INSPECTIONS!!!

"Don't Let it Become a Problem"

"Make a Plan"

"Shift the Risk"

"Maybe Required under CC&Rs"

Tip #4.....



DOCUMENT ISSUES!!!

"Avoid She Said – He Said"

"Incident Reports"

"Tangible Evidence for Claims"

Document

Tip #5.....



MAINTENANCE MATRIX!!!

"Insure and Maintain Properly"

"Best CHDB Money Condo Associations Will Spend"

"Superior Owner Knowledge"

Re look

Tip #6.....



WAIVER AND RELEASE!!!

"Your Event – Your Liability"

"Assumption of Risk"

"Shifting Risk Again"

Very common
USE.

Tip #7.....



INSURANCE IS NOT A SOLUTION!!!

"Make a Plan and Raise Funds"

"Insurance Protects Unforeseeable or Unexpected Issues"

Need a Solution

Raise
Funds

Tip #8.....

FUND AND SPEND THE RESERVES!!!

"Avoids Delays"

"Rainy Day Funds Don't Do You Any Good if it Never Rains"

"

10

Increases Liability

Reserve Study
3-5 years.

Tip #9.....

SIGNS AND NOTICES!!!

"Assumption of Risk"

"Knowledge"

"Allows Users to Make Informed Decisions"

"Prohibits Uses"

USA Canada

11

Notice on
what security
cameras are doing

Tip #10.....

CONTROL YOUR PROPERTY!!

"Rules and Regulations"

"Resolutions"

"Set Standards"

12

Expert opinions

Term Landlord =
home owner