

A Newsletter from the Common-Interest Communities & Condominium Hotels Program

Community Insights

SPRING EDITION

Department of Business & Industry, Real Estate Division

OMBUDSMAN'S HUDDLE

Real Estate Division

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Four months into this new year, I am proud to say that Administrator Sharath Chandra and I have been working diligently to improve and streamline many processes within the Ombudsman's Office. We have successfully reorganized certain sections in order to maximize efficiency and expertise. With the great staff that we have here at the Real Estate Division, we are now looking into new technologies, programs and systems that will further serve to maximize employee efficiency.

Regarding changes to staff, I am pleased to welcome the new Chief of CIC Compliance, Terry Wheaton. I am sure that he will similarly make excellent improvements to the internal investigation process as he deems necessary. Additionally, our previous Program Training Officer, Monique Williamson, has now become the Office's Education and Information Officer.

I am confident that Monique will be able to restructure our CIC education and training sections in order to combine different components of NRS and NAC 116 information under one streamlined educational umbrella. She has been working hard to educate HOA board members and unit owners throughout Nevada thus far, and will now begin to prioritize providing outreach to community managers.

Community managers are the focal point of information for many associations, and it is crucial for the State to have an open door policy with those at the center of the industry.

In terms of my own outreach to those in the industry, over the last few months, I have spoken at over 22 engagements of varying sizes and levels of understanding of NRS and NAC 116. I am always willing to explain the processes of the Ombudsman's Office and assist homeowners in better understanding their rights.

With the changing of the seasons, I am pleased to say that I am proud of all of the changes that this Office is making to improve customer service and outreach to constituents and I am excited for what the coming months have in store.

- Ombudsman Charvez Foger

Springtime in Red Rock Canyon National Conservation Area, Nevada



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EDUCATION CORNER

When requesting records from an association, which records are unit owners entitled to receive copies of?

Pursuant to NRS 116.31175, the executive board of an association shall, upon the written request of a unit's owner, make available the books, records and other papers of the association for review at a designated business location not to exceed 60 miles from the physical location of the common-interest community and during regular working hours.

Association records must be maintained for at least 10 years, with the exception of meeting minutes, which must be maintained until the common-interest community is terminated.

Within 21 days of written request by a unit owner, the executive board shall provide a COPY of:

- ⇒ The financial statement of the association;
- ⇒ The budgets of the association;
- ⇒ The study of the reserves for the association;
- ⇒ Audio recordings and meeting minutes
(must be available within 30 days of the meeting) .

These records must be provided by email at no charge, or if requested to be received in another format (i.e. paper, disk, flash drive, etc.) for a fee that covers the actual costs of preparing the copy itself (i.e. the amount for the paper and ink or device used).

All contracts to which the association is a party, all records filed with a court relating to a civil or criminal action to which the association is a party, the association's general violation record, and all other non-confidential records of the association must at least be made available for REVIEW.

Financial records, unlike financial statements, do not need to be provided directly to unit owners upon request, but must also at least be made available for review. Financial records are defined in NAC 116.0433 as the financial or transaction records necessary to support the financial statements of an association; i.e. receipts, bank statements, income tax reports, inventories, etc.

Pursuant to NRS 116.31183(1)(c), an executive board, a member of an executive board, a community manager or an officer, employee or agent of an association shall not take, or direct or encourage another person to take, any retaliatory action against a unit's owner because the owner requested in good faith to review the records of the association.

The executive board shall not require a unit owner to pay an amount in excess of \$10 per hour to review any books, records, contracts or other papers of the association. All records of the association must also be made available for a unit owner and his or her authorized agents to photocopy (116.3118(2)(b)).

Unit owners are not entitled to any document, other than minutes, still in the process of being developed for final consideration and approval by the executive board. They are also not entitled to any confidential records, such as those relating to other unit owners, or the personnel records of employees of the association (except for those records relating to number of hours worked, salaries and benefits).

If the executive board refuses to provide copies of mandatory records or to allow a unit owner to review other non-confidential books, records or other papers of the association, the Ombudsman may, after receiving a records request from the unit owner on Form 781, request to review and make copies of the books, records or other papers of the association on the unit owner's behalf. Such a refusal by the board to make available records of the association is a violation of the law and will be referred to Compliance for further investigation and potential disciplinary action by the Commission.

NOTE: With regards to records provided as part of a resale package, the association shall furnish required copies to the unit's owner or his or her authorized agent within 10 days after receipt of the written request for such documents (NRS 116.4109(3)).

QUESTIONS FROM OUR CONSTITUENTS

1. Does the executive board always have to get bids before starting a new association project?

Pursuant to NAC 116.405(8)(d) it is *recommended* that the executive board obtain, when practicable, at least 3 bids from reputable service providers who possess the proper licensing before purchasing any such service for use by the association. NRS 116.31086(1), however, does begin with the word “if,” and states “if an association solicits bids for a project, it must whenever reasonably possible, solicit at least 3 bids if the project is expected to cost 1 or 3% of the budget, depending on the size of the community.” So “if” the board gets one bid, it should obtain at least three.

2. Since NRS 116 does not define what a capital improvement is, how does the Division define “capital improvement?”

The Division considers a capital improvement to be an association expense for the acquisition or construction of NEW common element components to be included in the association's reserve study.

3. What if an executive board is not enforcing the CC&Rs of the association?

Pursuant to NRS 116.3102(3) the executive board can take enforcement action for a violation of the declaration, but is not required to if it determines that the violation is so material that it does not justify expending the association’s resources or if it is not in the association’s best interests to pursue the enforcement action. The board may not be arbitrary or capricious in taking enforcement action however.

OMBUDSMAN INFORMATION - January through March 2018

Total Associations Registered in the State of Nevada	3,219
Complaints Received	168
Complaints filed in Alternative Dispute Resolution (ADR)	85
Audits Conducted by the Ombudsman’s Office	45
Records Requests Processed	12
Training Sessions	20
Classroom Attendees	511

Main Page: <http://red.nv.gov/>

All forms can be found at:
<http://red.nv.gov/Content/Forms/All/>

Class calendars can be found at:
http://red.nv.gov/Content/CIC/Program_Training/;
and

<http://red.nv.gov/Content/Education/Calendars/CIC/>

If you have any questions, please email:
CICOmbudsman@red.nv.gov

NORTHERN NEVADA HOA EVENT

The picture to the right was taken at the Northern Nevada HOA Trade Show, held at the Silver Legacy Resort and Casino in Reno, Nevada on March 29, 2018. The event was presented by Better Reserve Consultants and it was a great success with nearly 40 vendors in attendance, including banks, arborists, pavement specialists, management companies, insurance providers, paint specialists, law firms, landscaping companies, CPAs, etc.

Pictured: Mari Jo Betterley, Reserve Study Specialist; Charvez Foger, Ombudsman



IN THE NEWS



HOA Swing Set Collapse

By Adam Herbets / Fox 5 Vegas News (KVVU-TV)
February 22, 2018

A jury reached a \$20 million verdict after a teenager suffered severe brain injuries from a swing set collapsing on his head at Lamplight Village in northwest Las Vegas.

Attorneys for Carl Thompson, who was 15 years old at the time of the injury, argued that the Lamplight Village HOA should have been inspecting and maintaining playground equipment that could be deadly if left unchecked.

"He was playing basketball," attorney Al Lasso said. "He sat down on the swing set to send a text message. When he sat down, the 42-pound steel bar fell from a height of eight feet and crushed his skull."

Lasso and his co-counsel, Sean Claggett, said they discovered the swing sets had been proven to be faulty at least three times prior to the collapse.

At trial, they told the jury that Lamplight Village had the option to pay a \$150 monthly maintenance fee, but declined.

Lasso and Claggett said the fact that Thompson survived was lucky. They said they believe a younger child would have died from the head trauma.

Court records show that Lamplight Village was offered multiple settlement offers, initially for less than a million dollars. Claggett said he wanted to settle in order to save his client from having to testify, but the HOA refused.

Homeowners have now stated that they are considering suing the homeowners' association for failing to alert them of pending litigation or settlement offers that have affected their home values.

"What we do know is that all those homeowner's in that community are impacted by this verdict," Claggett said. "We were telling, begging, the defense in this case to

please let the homeowner's know that we're making this offer, that they can be protected right now. We don't have to go through with this trial."

"In their eyes, they did nothing wrong," Lasso said. "This isn't the only HOA that's behaving this way," Claggett said. "HOAs around the valley are doing the same exact thing. It could have been anybody."

After reading this news article, what should be the takeaway for HOA board members?

- First, executive boards have the responsibility to use reserve money of the association to repair, replace and restore major components of the common elements that they are obligated to maintain (NRS 116.3115(2)(b)). The projected life expectancy of common elements and the funding needs of the reserves are based upon the performance of routine and preventative maintenance for each major component. Failure to perform such maintenance can negatively impact the remaining useful life of the major components and dramatically increase the funding needs of the reserves of the association over time (NAC 116.425(1)(q)(1)).
- Second, regarding the unit owners claiming that they had no knowledge of the incident or any pending litigation, at least once every quarter, and not less than once every 100 days, the executive board must review at one of its meetings the current status of any civil action in which the association is a party (NRS 116.31083(6)(f)). Additionally, for any new purchaser into a community, the resale package received prior to closing should contain, among other things, a statement of any unsatisfied judgments or pending legal actions against the association in order to inform the potential purchaser of exactly what type of financial liability they could be contractually entering (NRS 116.4109(1)(d)).

IN THE NEWS

Illegal Short-term Rentals Remain a Problem in Las Vegas Valley

By Michael Scott Davidson / Las Vegas Review-Journal
March 30, 2018 © 2018 LVRJ, Inc.

Clark County's crackdown on illegal short-term vacation rentals resulted in a record-shattering number of investigations last year. The county opened 501 cases, more than double the number opened in 2016. As of March 24, more than 100 cases have been opened this year so far.

County code enforcement Chief Jim Andersen said the influx prompted the county to create a task force to enforce its ban of home rentals lasting fewer than 30 days in unincorporated areas.

"The reality is it's going on every single weekend," he said. "In each two-day span we're finding between 10 and 15." However, Andersen said, some landlords who operate illegal rentals are changing their tactics to avoid detection. "They're letting their tenants know not to talk to code enforcement," Andersen said. "They'll go as far as putting fake leases together."

Data provided by the county show that illegal rentals are a problem across the Las Vegas Valley, but a large concentration of the investigations were at properties in the unincorporated town of Spring Valley. A quick survey of online rental services like Airbnb and HomeToGo shows homes being rented for more than \$1,000 a night. One advertisement for a corner lot containing two homes boasts it "sleeps 26-28."

Members of the town's advisory board said Spring Valley's proximity to the Strip and its large homes make it a desirable location for renters. Board members frequently get complaints from residents saying loud parties and droves of strangers are invading their neighborhoods.

"It's remarkably disruptive, and you don't know who should be there and not be there," said John Getter, who chairs the advisory board. Getter said that from his own backyard he's seen short-term rentals host parties with

more than 100 people. Local streets have been overwhelmed with vehicles on some weekends.

The county is turning to the courts to bring short-term rental operators into line. Liens totaling \$71,000 were imposed on seven homes last year. County commissioners voted in September to pursue a lawsuit against a company that continued renting out a 2,900-square-foot home in the northwest valley even after receiving four cease-and-desist letters. The company stopped renting soon after.



But Andersen wants to achieve faster results. By the end of May he hopes to introduce a new ordinance allowing code enforcement officers to issue citations and fines without first going to court. "If you can make contact with someone and physically hand them a ticket with a dollar

amount on it, it has a quick impact on their understanding that they need to stop," he said.

Want to report a home?

Here's what to provide if you suspect an illegal rental in your neighborhood:

- Address and owner of the rental home
- Website where the rental is listed and copies of any advertisements
- Dates when the home has been rented
- Photographs of any vehicles with out-of-state license plates at the home

Pursuant to NRS 116.340:

A person who owns a unit within a planned community restricted to residential use by the declaration may use that unit for a transient commercial use only if:

- The governing documents of the association and any master association do not prohibit such use;
- The executive board of the association and any master association approve the transient commercial use; and
- The unit is properly zoned for the transient commercial use and any license required by the local government for the transient commercial use is obtained.

As used in this section, "Transient commercial use" means the use of a unit, for remuneration, as a hostel, hotel, inn, motel, resort, vacation rental or other form of transient lodging if the term of the occupancy, possession or use of the unit is for less than 30 consecutive calendar days.

For additional information please visit:

<http://www.clarkcountynv.gov/administrative-services/Pages/Short-Term-Rentals-in-Unincorporated-Clark-County.aspx>

WHAT'S NEW?

Office of the Ombudsman's New Chief of Compliance



Please welcome our new Chief of CIC Compliance/Audit Investigations, Terry Wheaton!

Prior to starting with the Nevada Real Estate Division, Terry retired after 26 years of dedicated service as a Nevada Parole and Probation Officer (1989-1994) and United States Probation and Pretrial Services Officer (1994-2015).

While working for the Nevada Department of Parole and Probation, Terry completed Peace Officer Standards and Training (POST) and administered a caseload in excess of 120 defendants. Terry prepared and presented investigative reports and supervised high-profile offenders participating in the Electronic Monitoring Program. In addition to those duties, he served as a Safety Officer and self-defense and Armament Systems and Procedures (ASP) Expandable Baton instructor. Terry received special recognition for formulating and implementing the ASP Expandable Baton program in the United States Courts Probation and Pretrial Services Division.

As a Pretrial Services Officer, Terry served as the District of Nevada Critical Incident Stress Management (CISM) Program Coordinator and District Firearm Instructor and Location Monitoring Specialist (LMS).

Terry has been a resident of Las Vegas, Nevada for over 50 years, completing his Bachelors of Arts Degree in Criminal Justice at the University of Nevada Las Vegas, and is eager to fulfill the role of Chief of Investigations for the CIC Compliance section.

Office of the Ombudsman's New Education & Information Officer

Monique Williamson has taken over as Education and Information Officer for the Ombudsman's Office. Her previous role as the Training Officer has prepared her to take on this larger role of facilitating educational programs and materials to participants in the CIC industry across multiple disciplines, from unit owners to community managers.

In her new role, Monique will be working on creating and providing specialized training intended for community managers in order to ensure that the Division is providing a unified, clear voice and direction regarding the way in which the Division interprets certain grey areas of the law.

Monique will begin working on streamlining the CIC webpage in order to make educational and informational materials easier to find and will work closely with the new Training Officer to ensure that innovative methods for getting information to Nevada's outlying communities are researched and utilized.

"I am excited to make necessary changes to the education program to make it the successful and useful tool that it should be for all participants in the CIC industry."



Monique Williamson speaking at the Nevada Association of Community Managers Luncheon at the Las Vegas Country Club on March 15, 2018.

WHAT HAPPENED AT COMMISSION?

NAME	ALLEGATIONS	SETTLEMENT
<u>CIMARRON RIDGE ASSOCIATION, RICHARD SHINN, MAGGIE SHINN, JASON BISHOP</u> CASE# 2017-1368	Respondents knowingly and willfully violated NRS 116.31034(9) by serving on the board together when they are related by blood, adoption or marriage, or reside together.	Respondents agree not to serve as a board member or officer of any common-interest community located in the State of Nevada for a period of no less than 5 years from the date of the Order.
<u>DIAMOND CREEK HOME OWNERS ASSOCIATION, ROY COOPER AND KIM COOPER</u> CASE# 2017-1826	Respondents knowingly and willfully violated: NRS 116.31034 by serving on the board as officers when ineligible to do so and by failing to have elections; NRS 116.31144 by failing to cause the financial statement of the association to be reviewed by an independent CPA every fiscal year; NRS 116.3114 by failing to properly allocate surplus funds; and NRS 116.3103 (through NAC 116.405) by failing to act in good faith and in the best interests of the Association by: failing to comply with the Division's request to provide information and documents, supplying false or misleading information to the auditor, failing to have board meetings within every 100 days, and failing to maintain current accurate, and properly documented financial records.	Respondents agree not to serve as a board member or officer of any common-interest community located in the State of Nevada for a period of no less than 10 years from the date of the Order and agree to pay an administrative fine in the amount of \$250 to the Division no later than 30 days from the date of the Order.
<u>FREDERICK, JEFFREY ALLEN</u> CASE# 2017-1573	Respondent violated NRS 116A.400(1) by engaging in the management of a common-interest community without a community manager certificate from the Division.	Respondent shall pay an administrative fine to the Division in the amount of \$11,516.17 (\$10,000 for violations of law and \$1,516.17 for the Division's attorney's fees and costs), no later than 30 days from the date of the Order.
<u>GILLIS, KRISTEN</u> CASE# 2017-2082	Respondent violated NRS 116A by: failing to act as a fiduciary; failing to comply with state laws; failing to cooperate with the Division; concealing documents relating to the business of a client from the Division; performing community management services without a signed and approved management contract; and exceeding the authority granted by the association.	Community manager certificate revoked for a period of no less than 10 years from the date of the Order, but in no event sooner than the administrative fine of \$15,595.72 (\$13,000 for violations of law and \$2,595.72 for the Division's attorney's fees and costs) is paid to the Division.
<u>HILLCREST COMMUNITY ASSOCIATION, MULDOWNEY, HIRSCHBOECK, COOPER, MEYERS, FALGIANO</u> CASE# 2017-1093	Respondents knowingly and willfully violated: NRS 116.3103 (through NAC 116.405) by failing to comply with a request by the Division to provide information and documents, committing an act or omission which amounts to incompetence, negligence or gross negligence; NRS 116.31034 by serving as a board director without being a unit owner; NRS 116.31144 by failing to have the association's financial statement reviewed by a CPA; and NRS 116.3103 by failing to maintain current, accurate, and properly documented financial records.	Three of the respondents shall be removed from the board and shall not serve as a board member or officer of any common-interest community located in the State of Nevada for a period of no less than 10 years from the date of the Order. The two remaining respondents are to appoint a third board member as soon as possible, hire a community manager, hold an election as soon as possible, and cause audits or reviews to be performed pursuant to NRS 116.31144.
<u>VISTANA CONDOMINIUM OWNERS ASSOCIATION, LARRY FITCH, ANTHONY KNELP, LYNN WILLIAMS ARDICE NELSON</u> CASE# 2015-3373	Respondents violated NRS 116.31031 by allowing their manager to impose fines against owners or tenants without an opportunity to cure or a hearing, and violated the law 84 times by allowing the removal of vehicles within the Association without complying with NRS 116.3102(1)(s) or NRS 487.038.	Respondents shall each individually pay an administrative fine totaling \$5,128.40 to the Division (\$2,500 plus costs of \$10,513.58 for the Division's attorney's fees and costs, divided equally among the respondents), complete 9 hours of education classes offered by the Division no later than August 30, 2018, and the association shall make full restitution to the owners of the vehicles improperly towed.

Community Insights

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Nevada Real Estate Division Mission

To protect the public and Nevada's real estate sectors by fairly and effectively regulating real estate professionals through licensure, registration, education and enforcement.

Office of the Ombudsman Mission

To provide a neutral and fair venue to assist homeowners, board members and community managers in handling issues that may arise while living in a common-interest community or condominium hotel.

Community Insights is an official publication of:

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DEPARTMENT OF BUSINESS AND INDUSTRY
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COMMON-INTEREST COMMUNITIES &
CONDOMINIUM
HOTELS
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CIC COMMISSION MEETINGS 2018

June 19-20-21, 2018 South
August 28-29-30, 2018 North
November 6-7-8, 2018 South

Further details found at:

http://red.nv.gov/Content/Meetings/CIC_Calendar/

**Our office will be Closed:
Memorial Day
Monday, May 28, 2018**

