



Community Insights

A newsletter from the Nevada Real Estate Division
Office of the Ombudsman for Owners in Common-Interest Communities

Volume 1, Issue 1

Department of Business & Industry

Winter 2004

From The Administrator . . .

Gail J. Anderson

This first newsletter marks a milestone in the information and education efforts of the Office of the Ombudsman. The information and articles in this newsletter will give you both information and resources for finding information, such as the Real Estate Division's web page.

I am the Administrator of the Real Estate Division. My role is to oversee the programs that, by law, are given to the jurisdiction of this agency. The Real Estate Division has licensing and disciplinary jurisdiction over real estate licensees (salesmen, broker/salesmen, brokers, and property managers), time share sales agents, appraisers of real estate, home inspectors, and community association managers. At the end of the fiscal year, which ended June 30th, we were approaching 40,000 licensees under our jurisdiction.

The Office of the Ombudsman for Common-Interest Communities is one of the program sections within the agency. The Division also has a real estate appraisal section and a project registration section (which registers and oversees the sale of subdivided land and time shares).



The education section deals with all of the licensing-related education areas (pre-licensing, post-licensing, and continuing education). The licensing section receives and processes applications for licenses, permits, certificates, and registrations under the Division's jurisdiction. The compliance section of the Real Estate Division conducts investigations, which are forwarded to the Attorney General's office if evidence of a violation is found. The Attorney General's office prepares the Complaint, which is then heard before the commission of jurisdiction.

The Real Estate Division has three commissions with which we work: the Real Estate Commission, the Commission of Real Estate Appraisers and the Commission for Common-Interest Communities ("CCIC"). Senate Bill 100, in the 72nd Legislative Session (2003), gave the Real Estate Division jurisdiction and authority over homeowner association board members to assure that they are following the law and the governing documents of the association in the fulfillment of their duties as a board member.

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Community Insights

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COMMON-INTEREST COMMUNITY COMMISSION

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Homeowner Representative**

**Karen Brigg, Secretary
Property Manager**

**Diane Radunz, Commissioner
Certified Public Accountant**

**Shari O'Donnell, Commissioner
Developer Representative**

The legislation also created the CCIC to hear complaints brought by the State when there is evidence of violation of the law in Chapter 116. Governor Guinn appointed the members of this first commission in the fall of 2003, and they have been meeting since November 2003.

The CCIC submitted their proposed regulations to the Legislative Counsel Bureau for drafting, and the commission is now awaiting the draft language in order to proceed with the legal process for adoption. Public comment is an important part of this process. The Real Estate Division staff will conduct two workshops for public comment on the proposed regulations – one workshop is scheduled in Carson City on January 13, 2005 and the other workshop is scheduled in Las Vegas on January 20, 2005. After the public comment workshops have been held, the CCIC will hold a public meeting to adopt the regulations. There is a legislative commission review and filing with the Secretary of State's office that takes place before the new regulations take effect.

The adoption of the regulations is necessary before the CCIC can hold disciplinary hearings. I anticipate that the first disciplinary hearings before the CCIC will be in the spring of 2005.

It remains the goal of the Office of the Ombudsman, through the Intervention process, to assist with resolving disputes. The Alternative Dispute Resolution program and the Intervention programs exist for that purpose. Considerable time and resources are required for both the State and the responding party to bring a matter before the Commission. When a matter comes before the commission, it is not for resolution, but for possible disciplinary action if violations of law are proven.

Nevada Real Estate Division

OUR MISSION

The mission of the Nevada Real Estate Division is to safeguard and promote public interest in real estate transactions by developing an informed public and a professional real estate industry.

Ombudsman's Corner

by Eldon Hardy, Ombudsman



(L to R) Back row: Deneen James, Reshita Naylor, Joanne Gierer, Victoria Broadbent, Sonya Meriweather, Linda Hunt, Jo Ann Caravella. Front row: Jerry Thompson, Eldon Hardy, Jan Weintraub, Steve Urbanetti. Not pictured: Michael Lim. Insert: Patricia Christian.

The Office of the Ombudsman is excited to have the opportunity to publish this newsletter for everyone. As those who have been involved in homeowner associations and have communicated with our office know, we have tried very hard to respond and assist in making life as enjoyable as possible.

This achievement has been the mission of the Office of the Ombudsman from the very beginning. Living in a homeowner association affects the majority of residents in our state. Homeowner association living continues to become increasingly important to the State Government/Legislators who hold the responsibility of representing the citizens.

The actions which took place in previous legislative sessions, relating to Common-Interest Communities, reflected this importance. Legislation that was very much needed was approved in addressing more effective guidelines to improve life in common-interest communities.

The Office of the Ombudsman had an increase in the number of staff members to make it possible to increase and improve the level of service to homeowners, as we have

always desired to do. Also, a new government commission, the Commission for Common-Interest Communities, was appointed by the Governor.

The Commission's purpose is to assist those related in common-interest community living, including the Ombudsman office, to gain a sense of stability, security and a feeling of not being helpless at times and in certain circumstances. The Commission will assist in establishing efficiency and compliance in the operation of homeowner associations. We are looking forward to implementing the improvements the Commission can provide for Nevada residents and professionals in this industry.

A new process which has been implemented to assist associations is the utilization of the Intervention Affidavit process. When a homeowner has an issue, which they have been unable to resolve on their own and request the assistance of the Office of the Ombudsman, the Intervention Affidavit process is utilized. At this time, the Office of the Ombudsman is processing a large number of requests for intervention. Since the

inception of the Intervention Affidavit process, the office has opened 138 cases in the South and 24 cases in the North, of which 70 cases have been resolved and/or closed in the South and 5 cases have been resolved and/or closed in the North after investigation. We anticipate as both homeowners and associations familiarize themselves with this process and understand that a key component to resolution is communication, that these numbers will decrease and the office will be utilized only when all other methods of resolution have failed.

You can obtain a copy of the Intervention Affidavit form or any of the other forms or information utilized and/or produced by the Office of the Ombudsman by logging onto our web site at www.red.state.nv.us, Go to Common-Interest Communities or contact our office at 702/486-4480 or toll free at 1-877-829-9907 to have a form mailed to you.

Intervention

Intervention Affidavit - #530

Intervention Request for Reopening – #605

Registration

Homeowner Association Registration - #562

Homeowner Association Registration/
Filing of Articles of Incorporation -#603

Before you Purchase Property in CIC-#584

Alternative Dispute Resolution (“ADR”)

ADR Claim Form - #520

ADR Respondent Answer Form - #521

ADR Overview – #523

Mediator/Arbitrator Application - #522

Other informative information

Community Insights Newsletter

Commission for CIC

Proposed Regulation for CIC

Schedule of all seminars & locations

Reserve Study Guidelines

Vision, Mission & Philosophy of the Office of the Ombudsman

Vision Statement

Through education, effective communication and resolution, we (The Office of the Ombudsman) are a public resource that encourages harmonious living for homeowners in common-interest communities.

Mission Statement

The mission of the Office of the Ombudsman for Owners in Common-Interest Communities is to assist homeowners and elected or appointed officials in understanding their rights and responsibilities under Chapter 116 of Nevada law and their governing documents.

Our Philosophy

We believe that every homeowner has the right to live in a valued community that harvests serenity. We believe this can be achieved by providing public education and information, promoting successful communication, and offering assistance with impartial intervention and resolution.

Frequently requested numbers:

Association of REALTORS®- LV	702/732-8177
Association of REALTORS®- CC	775/829-5911
Business License – City	702/229-6281
Business License – County	702/455-4252
Clark County Legal Services	702/386-1070
County Recorder Office	702/455-4336
Financial Institutions Division	702/486-4120
HUD – Nationwide	888/297-8685
Insurance Division-LV	702/486-4009
Legislative Council Bureau	702/486-2800
Nevada Contractors Board	702/486-1100
Nevada Equal Rights Commission	702/486-7161
Nevada Fair Housing	702/731-6095
Ombudsman’s office	702/486-4480
Statewide toll-free	877/829-9907
Real Estate Compliance Dept.-LV	702/486-4033
Real Estate Compliance Dept.-CC	775/687-4280
Real Estate Division-LV	702/486-4033
Real Estate Division- CC	775/687-4280
Real Estate Licensing Dept.-LV	702/486-4033
Real Estate Licensing Dept.-CC	775/687-4280

Intervention Affidavit Process

Effective October 1, 2003, pursuant to Nevada Revised Statutes (“NRS”) 116.760 (1) which states, “Except as otherwise provided in this section, a person who is aggrieved by an alleged violation may, not later than 1 year after the person discovers or reasonably should have discovered the alleged violation, file with the Division a written affidavit which sets forth the facts constituting the alleged violation. The affidavit may allege any actual damages suffered by the aggrieved person as a result of the alleged violation.”

Listed below is an overview of what must be completed **prior** to requesting assistance from our office. This information can also be obtained in a brochure form located on our website at www.red.state.nv.us.

All of the following steps must be completed prior to consideration of the Commission for Common-Interest Communities (“Commission”). Not all matters will reach the Commission.

STEP NO. 1

Contact the Office of the Ombudsman for assistance in understanding rights, responsibilities and roles unit owners and board members have when living in common-interest communities.

STEP NO. 2

In order to process your Affidavit, the following documentation must be submitted along with your Affidavit form to the Office of the Ombudsman:

1. Copies of two letters sent, via certified mail with return receipt requested, to the party against whom you have the grievance. These letters must be mailed at least 15 days apart. Each letter must specify, in reasonable detail, the alleged violation, any actual damages you may have suffered because of the alleged violation, and any corrective action you propose.

The following outlines what steps should occur after the first certified letter is mailed:

- a. If a response is received from the first certified letter that resolves the grievance, you are not required to continue this process.
- b. If a response is received from the first certified letter, but it does not resolve the grievance, you **must** send a second certified letter referencing the same information in the first letter. You should also inform the

party that if you are unable to reach a satisfactory resolution, you intend to file an Affidavit with the Office of the Ombudsman for Owners in Common-Interest Communities.

c. If no response is received from the first certified letter, you **must** send a second certified letter referencing the same information from the first letter. You should also inform the party that if you are unable to reach a satisfactory resolution, you intend to file an Affidavit with the Office of the Ombudsman for Owners in Common-Interest Communities.

2. Copies of the two certified domestic return receipts (PS Form 3811). Attach each copied receipt (**showing the signature of the receiver**) to the copy of each letter mailed.
3. You must fill out page 3 of the Affidavit. It is imperative that you provide clear and concise facts regarding the alleged violation. It is also mandatory that page 3 is **notarized**. If additional sheets are required, you must attach them.

STEP NO. 3

If you are unable to resolve the matter on your own, you may file an Intervention Affidavit with the Office of the Ombudsman requesting that they intervene and assist you in resolving the problem. The Affidavit is available on our web site at: www.red.state.nv.us. Go to “Frequently Used Forms” and select form #530, or you may request this form from the Office of the Ombudsman.

STEP NO. 4

The Office of the Ombudsman will:

FACILITATE communication between opposing parties.

SEEK information about the problems and review the facts.

MEDIATE discussions aimed at resolving conflicts.

NEGOTIATE solutions to problems and,

MAKE a recommendation on how to solve the problem.

STEP NO. 5

The opposing parties may:

Accept the recommendation made by the Office of the Ombudsman and resolve the problem, or;

If the Affidavit involves violations of Chapter 116 of Nevada Revised Statutes and/or Nevada Administrative Code, and the recommendations of the Field Officer are not accepted or the matter is not resolved, the Ombudsman may refer the Affidavit and file to the Real Estate Compliance Section to have an investigation conducted. If the Division’s investigation results in a conclusion that violations exist, a formal Complaint for Disciplinary Action may be filed by the State with the Commission for Common-Interest Communities.

If the Affidavit involved violations of the governing documents of an association, and not violations of Chapter 116 of Nevada Revised Statutes or Nevada Administrative Code, you may choose to use the Alternative Dispute Resolution Program.

If the Affidavit involves both potential violations of the governing documents and potential violations of Chapter 116 of the Nevada Revised Statutes and/or the Nevada Administrative Code, you will be advised regarding concurrent use of the Alternative Dispute Resolution program and the intervention process.

Note: The Division highly recommends submitting your Affidavit by certified mail, return receipt requested, as we can not be held responsible for lost or misdirected mail.

Intervention Statistics

(as of December 8, 2004)

	Las Vegas	Carson City
Total # of Cases filed 10/1/03 to 12/8/04¹	<u>138</u>	<u>24</u>
Total # Cases Currently Open	<u>68</u>	<u>19</u>
Non-jurisdictional/initial receipt²	<u>2</u>	<u>1</u>
Affidavits sent directly to Compliance³	<u>2</u>	<u>0</u>
Cases closed⁴	<u>70</u>	<u>5</u>
Forwarded to Compliance⁵	<u>12</u>	<u>0</u>

¹ Affidavits received that resulted in a case being opened

² Issue does not pertain to NRS 116 or governing documents (not included in total cases filed)

³ Affidavits which are received but not processed through the Ombudsman’s office (not included in total cases filed)

⁴ Include cases that were forwarded to Compliance Department

⁵ Cases that were initially assigned to a Field Officer; a letter of recommendation may have been sent (included in # of cases closed)

Alternative Dispute Resolution (“ADR”) Program

by Steve Urbanetti, Program Officer I

The 1995 Legislature enacted Assembly Bill 152, a scheme of mandatory Alternative Dispute Resolution (“ADR”) between unit owners and homeowner associations concerning the interpretation, applications and enforcement of Covenants, Conditions and Restrictions (“CC&R’s”), or any bylaws, rules or regulations adopted by an association (collectively called “the governing documents”) or procedures used by increasing, decreasing or imposing additional assessments upon residential property. Under this law, no civil court actions involving CC&R’s, bylaws, rules or regulations of an association, including or differing assessments (including fines), may be filed until ADR is complete (*this does not pertain to the association’s right to foreclose for non-payment of assessments or to foreclose for health and safety violations*).

Nevada Revised Statute (NRS) 38.300-360 (Mediation and Arbitration of Claims relating to residential property within Common-Interest Community), and NRS 116.4117 are the applicable State statutes for ADR. Additionally, an Overview of the Alternative Dispute Resolution Law (Procedure for Mediating or Arbitrating Homeowner and Association Disputes) can be reviewed at www.red.state.nv.us, form #523.

Procedures for filing Alternative Dispute Resolution (ADR) claims with the Ombudsman office of the Nevada Real Estate Division:

1. File a claim with the Ombudsman’s office on a claim form provided by the Division and pay the required \$50 filing fee.
2. The claim form, an overview of the ADR law and respondent answer form must be properly served upon respondent with 45 days of filing with the Ombudsman’s office. The Ombudsman’s office will provide the forms that need to be served and answer any questions on proper service.
3. A notarized copy of the AFFIDAVIT OF SERVICE must be filed with the

Ombudsman’s office within 10 days of service.

4. The respondent has 30 days from date served to complete respondent answer form and file with the Ombudsman’s office. Respondent is also required to pay a \$50 filing fee.
5. When the Ombudsman’s office receives the respondent answer form, the choice of ADR is reviewed to determine what type of ADR each party has chosen.

Choices of ADR

Mediation – Claimant and Respondent must agree to mediation or the claim will automatically go to arbitration. The parties meet with a trained mediator, who promotes reconciliation, agreement or compromise. If mediation is successful, then an agreement is reduced to writing, which then becomes enforceable among the parties. Mediation and associated fees and costs may be less expensive than arbitration.

Non-Binding Arbitration – In both types of arbitration, the parties agree to present their respective case to a trained arbitrator, who renders a decision/award. The primary difference between binding and non-binding arbitration is that in non-binding arbitration the arbitrator’s decision is subject to a demand by any party for a “*trial de novo*” in court. If requested, a court will conduct a civil trial as if the arbitration never occurred.

Binding Arbitration – An award resulting from binding arbitration is final, binding upon the parties and is enforceable in the same manner as a civil judgment. The decision is not subject to a demand for *trial de novo* in civil court. It can only be vacated as provided by statute in NRS 38.241 upon grounds including, but not limited to, corruption, fraud and arbitrator partiality and misconduct.

6. A list of 5 arbitrators/mediators will be sent to claimant/respondent and they are given 30 days to mutually agree upon one. If they are unable to mutually agree upon one then the claim's manager for the Ombudsman's office will select an arbitrator/mediator randomly.
7. The claim form, respondent answer form and supporting documentation are forwarded to arbitrator/mediator. Unless otherwise agreed to by the parties, mediation must be completed within 60 days after the parties agree to mediation. The Division **strongly encourages** the completion of arbitration within 90 days after assignment of the case to an arbitrator.
8. Upon the conclusion of mediation or arbitration, the Division will issue a certificate to the parties certifying that they have completed the Alternative Dispute Resolution process as required by NRS 38.300-360.

Questions regarding compliance with mandatory ADR

The Division's staff will assist the parties to understand the procedures and the required forms to be utilized in the accomplishment of dispute resolution through mediation or arbitration. However, the Division cannot give a party legal advice. The Division also cannot advise whether any provision of an association's governing documents has or has not been violated or whether any provision is enforceable.

Mediators and Arbitrators are Independent Contractors

All parties should understand that the Division does not employ or otherwise control the performance of the work by mediators or arbitrators. The Division is not responsible for and does not endorse any conduct by any mediator, arbitrator, or party. The Division has no stake in the outcome of any dispute. All fees and charges of mediators or arbitrators are due and payable directly to the mediator or arbitrator.

The Division has no responsibility to regulate the fees or charges or to collect any sums payable to a mediator or arbitrator.

COMMENTARY

Since the inception of the ADR program (January 1, 1996), 634 claims have completed the ADR process. A significant number of these claims, 248 or 39% were dismissed, withdrawn or settled. Once an issue(s) reaches the level of filing an ADR claim, communication between the parties has either broken down or is now non-existent. Often times when an ADR claim is filed, the communication that ceased to exist starts again, therefore, resulting in the above statistics.

Before filing a claim, the filing party needs to ensure that they have given the other party every opportunity available to settle the dispute. As a homeowner you should contact the Board of Directors and inform them in writing (certified mail, return receipt requested is suggested) or at a meeting (provided written request was submitted and approved to have issue placed on agenda) of the dispute. As an association, make sure you contact the homeowner in writing (per statute) of the violation and inform the homeowner of the next steps that will happen if the violation is not cured. Another suggestion to possibly prevent the filing of an ADR claim would be to let the other party know that you intend to file an ADR claim if you are unable to reach a resolution to the dispute.

Again, keeping the lines of communication open and productive is what will assist homeowners and associations in their quest to have harmonious living for everyone in common-interest communities.

Alternate Dispute Resolution/Residential Planned Communities - www.red.state.nv.us

ADR Claim Form - #520
 ADR Respondent Answer Form - #521
 ADR Overview - #523
 Mediator/Arbitrator Application - #522

Commission for Common-Interest Communities



The Commission for Common-Interest Communities is a five-member body, appointed by the governor that acts in an advisory capacity to the Division, adopts regulations, and conducts disciplinary hearings.

Qualifications and Limitations:

- Must be a US citizen
- Must be a resident of the State of Nevada
- At least three members of the Commission must be residents of a county whose population is 400,000 or more
- Must have resided in a common-interest community or have been actively engaged in a business or profession related to common-interest communities for not less than 3 years immediately preceding the date of his appointment
- After the initial terms, each member of the Commission serves a term of 3 years. Each member may serve not more than two consecutive full terms. If a vacancy occurs during a member's term, the Governor shall appoint a person qualified to replace the member for the remainder of the unexpired term
- One member shall be a unit's owner residing in this state and who has served as a member of an executive board in this state
- One member shall be in the business of developing common-interest communities in this state
- One member shall hold a permit or certificate
- One member shall be a certified public accountant licensed to practice in this state pursuant to the provisions of chapter 628 of NRS
- One member shall be an attorney licensed to practice in this state

FAQ's regarding the Commission for Common-Interest Communities

by Tami DeVries, Legal Administrative Officer &
Joanne Gierer, Commission Coordinator

What is the Commission's role?

The Commission has several roles, which are all outlined in chapter 116 of NRS, but a few are mentioned here.

- Adopt regulations that would assist in clarifying or as necessary in carrying out the provisions of NRS chapter 116.
- Create and maintain information relating to common-interest communities, chapter 116 of NRS and the Alternative Dispute Resolution process.
- Develop and promote educational guidelines and recommend and approve courses for homeowners, board members and community managers.
- Have authority and jurisdiction to take disciplinary action against any person who commits a violation of chapter 116 of NRS. "Any person" includes:
 - Any association and any officer, employee or agent of an association.
 - Any member of an executive board.
 - Any community manager who holds a permit or certificate and any other community manager.
 - Any declarant or affiliate of a declarant.
 - Any unit's owner.
 - Any tenant of a unit's owner if the tenant has entered into an agreement with the unit's owner to abide by the governing documents of the association and the provisions of this chapter 116 of NRS and NAC.
- Act in an advisory capacity to the Division.

How can I talk to the Commission?

Anyone can attend a meeting of the Commission and make comments during the public comment item on the agenda. Since the Commission acts in a quasi-judicial capacity through their authority to take disciplinary action, they should not be contacted by the public regarding matters over which they may preside. Therefore, a member of the public is not advised to contact the Commission or any member of the Commission outside of one of their public meetings.

If you are unable to attend a meeting of the Commission, (schedule posted on our web site), you may forward your public comments to them in writing by mail, e-mail, fax or hand delivery. Any written material for the Commission should be sent to the Commission Coordinator as follows:

Joanne Gierer, Commission Coordinator
State of Nevada, Department of Business & Industry
Real Estate Division
2501 E. Sahara Avenue, Suite 205
Las Vegas, NV 89104
Fax No. 702-486-4520
E-mail: jegierer@red.state.nv.us

**NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON
PROPOSED REGULATIONS
LCB File No. R129-04**

The Commission for Common-Interest Communities and the Nevada Real Estate Division of the Department of Business & Industry of the State of Nevada, 2501 E. Sahara Avenue, Suite 104, Las Vegas, NV 89104 Phone No. 702-486-4480 and 788 Fairview Drive, Carson City, NV 89701 are proposing the adoption, amendment and repeal of regulations pertaining to **Chapter 116 of the Nevada Administrative Code**. Workshops have been set for the following dates, times and locations:

CARSON CITY, NEVADA:

**THURS., JAN. 13th, 2005
@ 9:00 a.m.**

Dept. of Business & Industry
**788 Fairview Drive
Hearing Room
Carson City, NV 89701**

LAS VEGAS AREA:

**THURS., JAN. 20th, 2005
@ 8:30 a.m.**

Henderson Convention Center
**200 S. Water Street
Grand Ballroom
Henderson, NV 89015**

The purpose of the workshop is to receive comments from all interested persons regarding the adoption of regulations that pertain to Chapter 116 of the Nevada Administrative Code. The following general topics may be addressed in the proposed regulations:

- Providing standards of practice for members of an executive board;
- Establishing fees relating to certificates and approval of courses;
- Establishing the fee to be assessed when a person submits a bad check or draft;
- Limiting the amount of fees for background investigations to the actual cost of conducting the investigation;
- Establishing certain requirements for provisional and supervising community managers;
- Establishing the requirements for the approval of schools;
- Revising the requirements for the approval and offering of courses in continuing education;
- Establishing the requirements for the approval and offering of distance education courses;
- Establishing the requirements for the approval of instructors of such approved courses;
- Setting forth the requirements that a certificate holder must meet to receive a certificate of completion of an approved course;
- Authorizing the Real Estate Division of the Department of Business & Industry to conduct audits of approved course and instructors of approved courses;
- Revising the standards of practice for community managers;
- Revising the application process for a person wanting to apply for, renew or reinstate a certificate;
- Revising the provisions pertaining to disciplinary actions against a community manager;
- Authorizing the Division to investigate and audit financial accounts related to an association under certain circumstances;
- Authorizing the Division to subsidize proceedings for binding arbitration;
- Setting forth the qualifications and application procedure for a party wishing to have a proceeding for arbitration subsidized;
- Establishing rules of practice and procedure for conducting disciplinary hearings;
- Requiring certain information to be included in a reserve study;
- Requiring an executive board to file electronically, if possible, the results of reserve study with the Division;
- Revising the qualifications required of a person conducting a reserve study;
- Clarifying the provisions exempting certain associations from the provisions of chapter 116 of NRS; and
- Providing other matters properly relating thereto.

A copy of all materials relating to the proposed regulations may be obtained at the **workshop** or by contacting the Real Estate Division at:

2501 E. Sahara Avenue, Room 101 & 104
Las Vegas, NV 89104-4137
(702) 486-4033, x. 222
E-mail: tdevries@red.state.nv.us
TAMI DEVRIES
www.red.state.nv.us

788 Fairview Drive, Suite 201
Carson City, NV 89701
(702) 687-4280

NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Adoption, Amendment and
Repeal of Regulations of the
Commission for Common-Interest Communities

The Commission for Common-Interest Communities will hold a public hearing at **8:30 a.m.**, on **THURSDAY, JANUARY 27, 2005**, at **HENDERSON CONVENTION CENTER, 200 S. WATER STREET, HENDERSON, NV 89015**. The purpose of the hearing is to receive comments from all interested persons regarding the Adoption, Amendment AND Repeal of regulations that pertain to chapter 116 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation or amendment.

The Commission for Common-Interest Communities was created in the 2003 Legislative Session and was authorized by the Legislature to adopt, amend and repeal the provision of chapter 116 of NAC in order to carry out its duties outlined in chapter 116 of NRS.

2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.

- **Providing standards of practice for members of an executive board;**
- **Establishing fees relating to certificates and approval of courses;**
- **Establishing the fee to be assessed when a person submits a bad check or draft;**
- **Limiting the amount of fees for background investigations to the actual cost of conducting the investigation;**
- **Establishing certain requirements for provisional and supervising community managers;**
- **Establishing the requirements for the approval of schools;**
- **Revising the requirements for the approval and offering of courses in continuing education;**
- **Establishing the requirements for the approval and offering of distance education courses;**
- **Establishing the requirements for the approval of instructors of such approved courses;**
- **Setting forth the requirements that a certificate holder must meet to receive a certificate of completion of an approved course;**
- **Authorizing the Real Estate Division of the Department of Business & Industry to conduct audits of approved course and instructors of approved courses;**
- **Revising the standards of practice for community managers;**
- **Revising the application process for a person wanting to apply for, renew or reinstate a certificate;**
- **Revising the provisions pertaining to disciplinary actions against a community manager;**
- **Authorizing the Division to investigate and audit financial accounts related to an association under certain circumstances;**
- **Authorizing the Division to subsidize proceedings for binding arbitration;**
- **Setting forth the qualifications and application procedure for a party wishing to have a proceeding for arbitration subsidized;**
- **Establishing rules of practice and procedure for conducting disciplinary hearings;**
- **Requiring certain information to be included in a reserve study;**
- **Requiring an executive board to file electronically, if possible, the results of reserve study with the Division;**
- **Revising the qualifications required of a person conducting a reserve study;**
- **Clarifying the provisions exempting certain associations from the provisions of chapter 116 of NRS; and**
- **Providing other matters properly relating thereto.**

3. The estimated economic effect of the regulation on the business, which it is to regulate and on the public. These must be stated separately and in each case must include:

BUSINESSES REGULATED:

(a) Both adverse and beneficial effects; and

Businesses that are regulated in chapter 116 of NAC consist of homeowner associations and community managers. These regulations may have an economic impact on each of these businesses in that they seek to require more accountability to both the Division and the members of the associations or that the managers manage. The fees for certification are being increased for managers. Education course providers will be required to pay fees for processing their applications to have their courses accredited. Associations may have an economic effect relating to the new requirements for their accounting practices. Section 58 adopts by reference the Common Interest Realty Associations – AICPA Audit and Accounting Guide, which must be followed by all associations governed by chapter 116 of NRS and NAC.

(b) Both immediate and long-term effects.

Immediate effects on regulated businesses will be the adjustments that they will be making pursuant to the changes that these regulations impose upon them. The long-term effects should be more accountable and fiscally sound decisions.

PUBLIC:

(a) Both adverse and beneficial effects; and

There are no known adverse economic effects for the public from these proposed regulations. The beneficial effects are that the associations should be more accountable to its members, the managers should be better educated and the accounting practices should become uniform throughout all associations in the state.

(b) Both immediate and long-term effects.

There are no known immediate economic effects for the public from these proposed regulations. The long-term effects should be similar to the beneficial effects mentioned in the foregoing item.

4. The estimated cost to the agency for enforcement of the proposed regulation.

The agency anticipates cost for handbook production, cost of educating the associations regarding the new requirements, cost of educating the public of the changes, cost of subsidizing arbitration and cost of additional staff time being spent on preparation and the cost involved for witnesses, travel, salaries and other costs related to the Commission hearings.

5. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

None known at this time.

6. If the regulation is required pursuant to federal law, a citation and description of the federal law.

Not applicable.

7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

None known at this time.

8. Whether the proposed regulation establishes a new fee or increases an existing fee.

Yes, new fees are being established and existing fees are being increased in Sections 12, 13 and 14.

Persons wishing to comment upon the proposed action of Commission for Common-Interest Communities may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to **Nevada Real Estate Division, 2501 E. Sahara Avenue, Suite 102, Las Vegas, NV 89104, Attention: Tami DeVries.**

Written submissions must be received by the Nevada Real Estate Division on or before **THURSDAY, JANUARY 20, 2005.** If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Commission for Common-Interest Communities may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be Adopted, Amended and Repealed will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be Adopted, Amended, and Repealed will be available at Nevada Real Estate Division, 2501 E. Sahara Avenue, Suite 104, Las Vegas, NV 89104 or Nevada Real Estate Division, 788 Fairview Drive, Suite 200, Carson City, NV 89701, and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

Education Requirements Proposed to Increase for Managers of Common-Interest Communities

Matt Di Orio, Education & Information Officer

The mission of the Nevada Real Estate Division is to safeguard and promote public interest in real estate transactions by developing an informed public and a professional real estate industry. In keeping with its mission, the Real Estate Division, through the Office of the Ombudsman for Owners in Common-Interest Communities has developed educational opportunities for board members and homeowners of those communities. The *Ombudsman's Seminars* are a resource contributing to an informed public.

The Division also recognizes that competent community association managers are a significant factor to safeguard and promote the public interest. To that end, requirements for the qualifications of certified property managers were established, including formal education and training. Through its Education Section, the Division administers the pre-certification and continuing education course standards originally established by the Real Estate Commission and now being amended by the more recently created Commission for Common-Interest Communities. The pre-certification course includes instruction in the fundamental principles of common-interest community management as well as current Nevada statutes and regulations relating to common-interest communities. The Commission is currently reviewing the pre-certification course and is considering an increase from the current twenty-four hours of instruction to a more comprehensive sixty-hour curriculum. The continuing education requirements for certified community association managers are also being revised by the Commission and are proposed to be doubled from the current nine hours to eighteen hours of education courses approved by the Commission.

The pre-certification course currently requires at least eight hours of instruction relating to federal, state and local laws applicable to management of a common-interest community and sixteen hours in the basics of common-interest community management. The law requirement may increase to twenty hours in the following subjects: not less than two hours relating to Federal law, including the Americans with Disabilities Act, Federal Fair Housing, Federal Fair Debt Collection, FCC and other laws applicable to common-interest communities; and not less than eighteen hours relating to The Uniform Common-Interest Ownership Act in Nevada (NRS and NAC 116) including learning how to read and use NRS and NAC 116, creating policies for implementation of rules and adopting resolutions, unit owner rights, board and manager responsibilities, board

meetings, member meetings, election of directors, use of the secret ballot and use of proxies. The basics of common-interest community management requirement may increase to forty hours of instruction in the following subjects: understanding the legal basics of common-interest communities and the governing documents; the management of facilities and use of experts; accounting; preparation and monitoring of budgets; expenditures and reserves; the use of financial statements; contracts with the common-interest community; obtaining bids and requests for proposals; parliamentary procedures; what is required by law; adoption of specific rules for the community; the management of human resources including people skills, organization and communication; inspection and planning for property maintenance; risk management; the types of insurance that must be maintained by a common-interest community; governmental regulations that affect a common-interest community such as zoning and planning; other Nevada laws such as the Nevada Fair Housing Law, the Residential Landlord and Tenant Act, the disclosure of required information in real estate transactions, defects in construction, and the alternative dispute resolution for claims relating to residential property within a common-interest community; corporation law; industrial insurance; health and safety; and business ethics.

After receiving a certificate, a common-interest community property manager currently must complete nine hours of continuing education for renewal of the two-year certificate (license). These courses must be approved by the Commission. The continuing education requirement may increase to eighteen hours. At least three of the continuing education hours must consist of instruction relating to the law and regulations governing common-interest communities in Nevada.

The proposed increase in both the pre-certification and continuing educational requirements is a response to the ever-increasing complexity of operation of common-interest communities. The increased educational requirements, coupled with a required state licensing examination and additional proposed experience requirement that a new manager must be supervised by a certified community manager for at least two years, will help ensure competency of community association managers to safeguard and promote the public interest.

Homeowner Association Seminars

by Sonya Meriweather, Administrative Officer

The Real Estate Division ("Division"), Office of the Ombudsman sponsors monthly homeowner association seminars for executive board members that are either elected by the homeowners or appointed by the board. The Division has contracted with specialist in the industry to present ten (10) different topics that range in scope from how to conduct a meeting to the components of a reserve study.

The seminars are presented in the following locations:

Laughlin - second Tuesday of the month

Las Vegas - third Wednesday of the month

Mesquite - first Monday of the month

Pahrump - third Friday of the month

Reno - fourth Saturday of the month

(Note – days are subject to change if seminar falls on or close to holiday. There are some months that seminars are not scheduled.)

Around November and December, the office usually takes a hiatus and no seminars are presented during these months. In 2004, we tried something different – the Ombudsman himself and the Field Officers were the actual presenters for Your Board and You. These seminars were held on November 4, November 18, December 2 and December 16, 2004. The seminar included information on the board's responsibilities, homeowner rights and responsibilities for association living and how to assist in creating a harmonious community.

Seminars will begin again in January 2005. We anticipate a good turn-out as always and hope to see you there. You can log onto our web site at www.red.state.nv.us to obtain a schedule of the seminars in all locations or clip and save the following schedule.

Up and Coming Seminars in the following areas:

MESQUITE

Fiduciary Responsibilities	1/10/2005
Organizational & Planning Tools	2/7/2005
Impact of Litigation	4/4/2005
Professional Management	6/6/2005
Financially Managing Non-Profit	7/11/2005
Maintenance in the Community	8/1/2005
Risk Management	9/19/2005
Reserve Study	10/3/2005
Fiduciary Responsibilities	1/9/2006
Handling Conflict in an Association	3/6/2006
Impact of Litigation	4/3/2006

LAS VEGAS

Fiduciary Responsibilities	1/19/2005
Organizational & Planning Tools	2/16/2005
Handling Conflict in an Association	3/16/2005
Impact of Litigation	4/20/2005
Professional Management	6/15/2005
Financially Managing Non-Profit	7/20/2005
Maintenance in the Community	8/17/2005
Risk Management	9/21/2005
Reserve Study	10/19/2005
Fiduciary Responsibilities	1/18/2006
Association Meetings	TBD
Handling Conflict in an Association	3/15/2006
Impact of Litigation	4/19/2006
Organizational & Planning Tools	TBD
Professional Management	TBD

LAUGHLIN

Fiduciary Responsibilities	1/11/2005
Organizational & Planning Tools	2/8/2005
Professional Management	6/14/2005
Financially Managing Non-Profit	7/12/2005
Maintenance in the Community	8/9/2005
Risk Management	9/13/2005
Reserve Study	10/11/2005
Handling Conflict in an Association	3/14/2006
Impact of Litigation	4/11/2006

PAHRUMP

Fiduciary Responsibilities	1/21/2005
Organizational & Planning Tools	2/11/2005
Handling Conflict in an Association	3/18/2005
Impact of Litigation	4/15/2005
Professional Management	6/17/2005
Financially Managing Non-Profit	7/15/2005
Maintenance in the Community	8/19/2005
Reserve Study	10/21/2005
Fiduciary Responsibilities	1/20/2006
Handling Conflict in an Association	3/17/2006
Impact of Litigation	4/21/2006

RENO

Fiduciary Responsibilities	1/22/2005
Organizational & Planning Tools	2/26/2005
Impact of Litigation	4/23/2005
Professional Management	6/25/2005
Financially Managing Non-Profit	7/23/2005
Maintenance in the Community	8/27/2005
Risk Management	9/24/2005
Reserve Study	10/22/2005
Handling Conflict in an Association	3/4/2006
Impact of Litigation	4/22/2006

Note: Please visit our website prior to scheduled date to obtain locations, times and for any changes to the above schedule.

Registering with the Office of the Ombudsman

Effective November 1, 2003 the Secretary of State shall not accept for filing any articles or amendments that provide that the entity name contain the words "unit-owners association" or "homeowners association" or it appears in the articles or amendment that the purpose of the entity is to operate as a unit owner's association pursuant to Nevada Revised Statutes ("NRS") 116 unless the Administrator of the Real Estate Division ("Division") has certified that the entity has:

1. Registered with the Ombudsman for Owner's in Common-Interest Communities pursuant to NRS 116.31158 and:
2. Paid to the Administrator of the Real Estate Division the fees required pursuant to NRS 116.3115.

As indicated above, before an entity can file their incorporation paperwork with the Secretary of State's office, if the name of the entity contains the words "unit-owners association" or "homeowners association" or it appears in the articles or amendment that the purpose of the entity is to operate as a unit owner's association pursuant to Nevada Revised Statutes ("NRS") 116, that entity must first obtain a certificate from the Office of the Ombudsman indicating they have registered with our office. To obtain a certificate, the entity will need to notify the Office of the Ombudsman of its existence and complete an initial registration form. A certificate will then be mailed to the requester that will indicate they have registered with the Office of the Ombudsman. Should the entity contain the above words and the articles of incorporation indicate the purpose is for business other than that of a unit owner's association that entity will need to provide to the Division a letter indicating they are not a homeowner association and a copy of the articles that will be filed with the Secretary of State's office. The requester will then receive a letter from the Division indicating they are exempt pursuant to Nevada Revised Statutes NRS 116.110378. With either scenario, the entity will be required to submit the **ORIGINAL** document from the Division to the Secretary of State's office for filing their articles of incorporation.

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State of Nevada
Department of Business & Industry
Real Estate Division
2501 E. Sahara Avenue, Suite 104
Las Vegas, NV 89104-4137

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