

COMMUNITY INSIGHTS

VOLUME V, ISSUE II

Department of Business and Industry, Real Estate Division

Summer 2009

Nevada Real Estate Division

OUR MISSION

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

Office of the Ombudsman

OUR MISSION

To provide a neutral and fair venue to assist homeowners in handling issues that may arise while living in a common-interest community.

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From the Ombudsman's Desk

Invitation: Join us for review of sweeping changes to HOA law

By LINDSAY WAITE
Ombudsman

The focus of the Office of the Ombudsman is twofold: 1) to mediate disputes in homeowner associations where people are willing to meet with each other and 2) to educate homeowners and board members with respect to their rights and responsibilities under HOA statutes and regulations. In the Winter 2009 issue of *Community Insights*, I reviewed techniques for conflict resolution, addressing my first focus. In this issue, I want to highlight the education outreach efforts made by this office.

Over the past year, staff, including me, Education Officer Nicholas Haley, Program Officer Sonya Meriweather, Program Officer Victoria Broadbent, Administrative Assistant



Rhonda Galvin, Accounting Assistant John Sarff, Administrative Assistant Megan Roller, Administrative Assistant Gordon Milden, and Compliance Chief Bruce Alitt have

conducted classes on a variety of subject areas: the Intervention Affidavit process, the process for complaints regarding community managers, the investigative process of the Compliance Section, the registration process and related forms (addendum, reserve study summary, declaration of certification of board member), and Alternative Dispute Resolution.

Beginning in July 2009, outreach events are expanding. On July 24 and Aug. 10 (10 a.m. to 1 p.m. both days), I, Nicholas Haley and Bruce Alitt will conduct a 2009 Legislative Review in the Bradley Building. Space is limited, so go to the Web site for more information, then call Nicholas Haley at (702) 486-4480 to reserve a seat. Additional dates are Sept. 16 at 6 p.m. in northwest Las Vegas, at 11 a.m. Oct. 17 in Henderson, and at 11 a.m. in Reno on Nov. 3.



Bruce Alitt, Nick Haley and Lindsay Waite address questions at a seminar held in the Bradley Building, 2501 E. Sahara Ave. The Office of the Ombudsman will host a new series of seminars for HOA members beginning July 24 focusing on changes to NRS 116 stemming from the 2009 Legislature.

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**STATE OF NEVADA
DEPARTMENT OF BUSINESS
AND INDUSTRY**

Dianne Cornwall
Director

REAL ESTATE DIVISION

Gail J. Anderson
Administrator

OFFICE OF THE OMBUDSMAN

Lindsay Waite
Ombudsman

Nick Haley
Editor

LAS VEGAS OFFICE
2501 E. Sahara Ave., Suite 202
Las Vegas, Nevada 89104-4137
(702) 486-4480

STATEWIDE TOLL FREE
1-(877) 829-9907
CICOmbudsman@red.state.nv.us

CARSON CITY OFFICE
788 Fairview Drive, Suite 200
Carson City, Nevada 89701-5433
(775) 687-4280
<http://www.red.state.nv.us>

**COMMISSION FOR
COMMON-INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS**

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Jeannie Redinger, Commissioner
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Commissioner's Corner

New policies must consider diversity of Nevada's CICs



By **MICHAEL BUCKLEY**
Commission Chairman

The conclusion of the 2009 Legislative Session was quite a bit different from 2007. Two years ago, a flurry of activity resulted in Gov. Gibbons vetoing the only significant common-interest community (CIC) bill, SB 396. This year the legislative process calmly rolled out 15 bills affecting CICs.

I remember thinking in May 2007 that the Commission had some heavy work to do, tackling by regulation where possible those problems that the Legislature had been unable to "fix." As I wrote in my April, 2008 Article, however, a strange thing happened, "upon the kind of reflection that is only possible over time, Commissioners realized either that the problem was not as egregious as it seemed in the frenzy of the legislative session or . . . the 'fix' would have created more problems than it cured." Clearly this July we have a whole different ball game!

In the heat of discussion that can only be generated in the midst of legislative proposals, we run the danger of thinking that success or failure depends on the outcome of the legislation. There is the feeling that, now that xyz is the law things will be better, or, conversely, now that xyz is the law, some particular group (Take your pick: managers, board members, unit owners, large communities, small communities, rural communities, etc.) is doomed.

Once we step back from the fray, we realize that life goes on. Some problems were fixed, others weren't; new problems will arise, old ones will disappear. Legislation is not a panacea.

Yet one of the very positive things that our legislative session accomplishes is a public discussion of the perceived problems affecting CICs. Claims are made that thus and so is a serious problem; some assert that this is not the case. Each side must make its case to a committee of legislators in each house. Questions are asked. Perhaps an alternative solution is suggested. In the process of this legislative debate a learning process occurs. (Each year it is my hope that a much greater discussion of these issues will occur at the Commission level *before* the Session begins.)

I recall a client once saying that the best contracts are those that get filed away and are never

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Compliance finds help from inside

Real Estate Division assistant welcomes opportunity to serve as investigator

Although new on the job, Kathy Hamilton knew her way around the Compliance section from day one.



The newest NRS 116 investigator previously served just one door down the hall in the Real Estate administrator's office as the point-of-contact for much of the Division's internal matters. After a year as next-door neighborhood to Compliance, she was delighted when the opportunity arose to join its ranks. She began in June. "I'm excited. I want to take on

my share of cases and get to where I can help communities understand their situations and find answers," Hamilton said. "I hope to get up to speed quickly, so I can be an asset as soon as possible."

First, however, is the arduous task of learning NRS 116 and NAC 116, the laws regarding common-interest communities in Nevada. Beyond statutes and regulations themselves, there's also the need to understand the business of communities and the processes of her new office.

Hamilton finds parallels to her new assignment in her past work as an insurance-claims adjuster, which is investigative in nature.

"The competing claims, the fact-finding, the problem-solving – some of it is very similar, although working for the state is a different perspective," she said. "I'm looking forward to the challenge."

Some reminders regarding HOA registration with Ombudsman

Each association is required by Nevada Revised Statutes (NRS) 116.31155 and 116.31168 to submit a \$3 unit fee for each unit conveyed in the association annually along with a registration form. To assist in a timely and acceptable filing, the following are points to remember:

- Fees required to be paid are due annually to the Office of the Ombudsman on its last business day of the month in which the association was incorporated through the Nevada Secretary of State.
- Payments to the State of Nevada in excess of \$10,000 must be by electronic transfer.
- Fees not received timely will have a 10 percent penalty assessed and interest assessed when appropriate.
- The annual registration form and the remittance notice must accompany the unit fees.
- A master association must submit a master roster to ensure accurate allocation of fees to each sub-association.
- If the master association is responsible for submitting the unit fees, the sub-association is required to submit the annual registration form in the month the master submits the fees.
- The annual registration form can be signed only by 1. a member of the board of directors, 2. the declarant, or 3. the community manager.
- All information on the registration must be provided. If it is unclear how to complete a question, instructions are provided with the registration form.

Did you know ... ?

Forms change. Whether it's to adapt to a new law or regulation, or to clarify confusing language the Real Estate Division, including the Office of the Ombudsman, must update its forms from time to time. When it does, the old ones typically become obsolete and may or may not be accepted. Since the beginning of the year, there have been updates to the Annual Association Registration, Reserve Study Summary and

Community Manager Continuing Education Course Application. Are you using the most recent form? Check http://www.red.state.nv.us/Forms/formsbvttype.htm#Common-Interest_Communities to find out. Also, many of our forms are interactive, meaning you can fill them out electronically before printing and mailing them. (Sorry, but we must receive hard copies of them.)

2009 Legislature actions affecting homeowner associations

SB 68	Establishes responsibility for maintenance of certain walls in common interest communities
SB 114	Prohibits certain restrictions for using solar energy and other renewable energies
SB 182	Elections, authority to levy assessments and fines, penalties, due process for hearings
SB 183	Voting rights of delegates, restrictions on assessments for tax-exempt, candidate disclosures
AB 204	Superpriority liens, distribution of fine and collection policy
AB 207	Requirements for rural agricultural associations
SB 216	Enacts provisions regarding the addition of shutters to units in CICs
AB 251	Allows CICs to reduce costs for uncontested elections. NRS 116.31034 and NRS 116A.410
SB 253	Revises provisions for leasing, board disclosures, resale package, and openness of CIC bids
SB 261	Updates the Common-Interest Ownership Act
AB 311	Revises provisions governing audits of homeowners associations
AB 350	Revises provisions relating to costs of collection, interest on certain past due assessments and copies of documents
SB 351	Provisions for where associations may deposit funds, filling board vacancies, ARC form privacy, reserve obligations, updates to "Before You Purchase .." disclosure
AB 361	Limited provisions for associations to abate public nuisance on abandoned properties; allows associations to obtain copies of deeds of trusts

Corner

Continued from Page 2

heard from again. After serious negotiations, each side knows where the other stands and has agreed to the compromises and resolutions that make for a successful contract.

Clearly a legislative debate that occurs in the Legislative Building in Carson City, on a TV monitor in the Sawyer Building in Las Vegas, and over the Internet, is not the same as face-to-face contract negotiations between two parties to a contract. The legislative process, however, is similar; but the results of those negotiations, the compromises and solutions, need to be communicated to those who didn't have the opportunity to be present.

We, as Commissioners, together with the Division, now need to continue that communication process with you, our CIC constituency. To begin, six of the new bills require new regulations. I hope that you will participate in this process.

Among the more important regulations to be considered by the Commission are minimum due process standards for association hearings involving violations of governing documents (SB 182, Section 18); whether the Public Offering Statement given to new buyers should require additional disclosures (SB 183, Section 5.5); and the amount of fees an association may recover in connection with the collection of past due obligations (AB 350, Section 1).

The Division must also adopt policies via advisory opinions (SB 182, Section 5). We have our work cut out for us, and I look forward to significant public comment

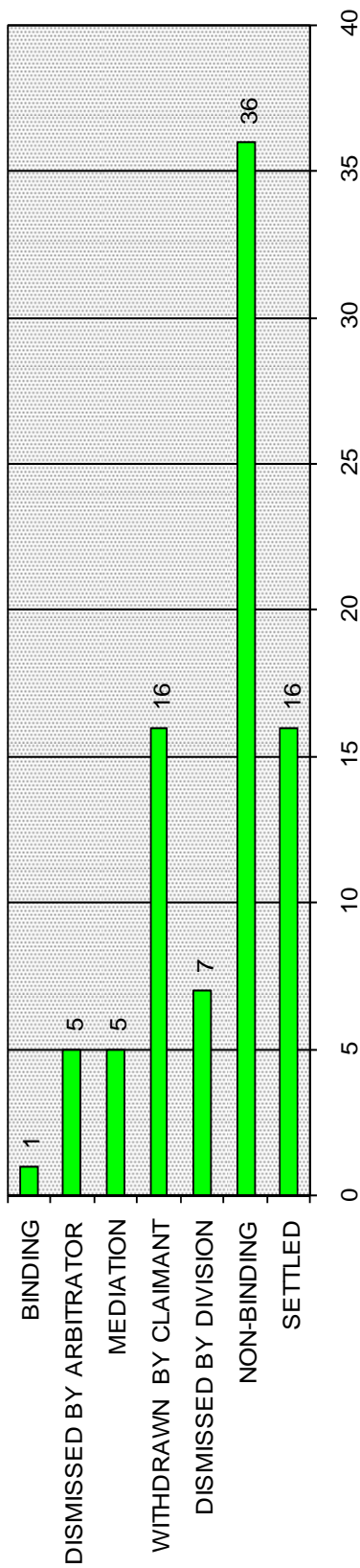
on each of these issues. Again, in the somewhat mind-numbing process of creating rules, we all learn just a little bit more. Things previously not said are brought out in the open, a light goes on.

As should be apparent, the end of the Legislative Session and the effectiveness of new laws is not the end of a process but very much the start of something new, as those of us affected by the changes come to a better understanding of just how the new rules affect us.

There will be celebratory cries of victory – *our problems are fixed!* – and of defeat – *we're finished!* Don't believe either one. We will muddle through the good things and the bad things, and we'll all be back in 2011 to start all over again, as though we never learned a thing from 2009 or 2007, 2005, 2003 – you get the idea.

Perhaps the most interesting change to come out of the 2009 Legislature is the addition of two new representatives to the Commission. The intent of the legislation (SB 182, Section 30) is to require greater input from, for lack of a better phrase, "plain old unit owners," since the new commissioners are not required to have served as members of the executive board. (The new commissioners begin their term of office on October 1, 2009.) I look forward to the addition of new voices and fresh insights for that is indeed the strength of the Commission, the ability and the need of five and, soon, seven independent voices to reach a decision in an open meeting. I would be surprised if our new commissioners were interested in the work of the Commission but not interested in serving on their own boards of directors, but I love surprises!

Alternative Dispute Resolution Claims from 10-01-08 to 05-31-09



DATE OPEN	DATE CLOSED	CLAIM	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
05-21-08	10-14-08	08-115	Homeowner	Mediation	Enforcement of Governing Documents	Unsuccessful Mediation
03-06-08	10-17-08	08-83	Homeowner	Non-Binding Arbitration	Enforcement of Governing Documents	Arbitration found in favor of Respondent. Claimants to reimburse Respondents \$45,689.88 in fines, fees, arbitration and attorney's costs and fees.
07-30-07	10-21-08	08-14	Homeowner	Settled	Property Damage	Settlement Agreement
05-05-08	10-23-08	08-108	Homeowner	Settled	Fiduciary Duties	Settlement Agreement
12-24-07	10-24-08	08-59	Homeowner	Non-Binding Arbitration	Fines	Arbitration found in favor of Respondent. Claimant to reimburse Respondent \$21,755.88 in arbitration and attorney costs and fees.
03-27-08	10-24-08	08-91	Homeowner	Non-Binding Arbitration	Fines	Arbitration found in favor of Respondent. Claimant to reimburse Respondent \$9,916.26 in arbitration and attorney costs and fees.
03-27-06	10-27-08	06-64	Homeowner	Mediation	Property Damage	Unsuccessful Mediation
12-24-07	10-27-08	08-58	Homeowner	Non-Binding Arbitration	Fines	Arbitration found in favor of Respondent.
07-10-08	10-28-08	09-05	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant.

Alternative Dispute Resolution Claims from 10-01-08 to 05-31-09 (Cont.)

DATE OPEN	DATE CLOSED	CLAIM	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
09-22-08	11-25-08	09-29	Homeowner	Dismissed by Division	Property Damage	Dismissed by Division due to lack of service
09-26-08	11-26-08	09-31	Homeowner	Dismissed by Division	Other Governing Documents	Dismissed by Division due to lack of service
04-04-08	11-26-08	08-95	Homeowner	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Each side responsible for their own costs and fees.
04-17-08	11-26-08	08-100	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Respondent to reimburse Claimant \$13,965.27 in fines and costs.
04-25-08	11-26-08	08-102	Homeowner	Settled	Enforcement of Governing Documents	Settlement Agreement
05-12-08	11-26-08	08-111	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Respondent to reimburse \$16598.40. \$10,500.00 in fines and fees. \$5049.40 for attorney. \$1040.00 for arbitration.
06-03-08	11-26-08	08-118	Homeowner	Settled	Fines	Settlement Agreement
07-03-08	11-26-08	09-02	Homeowner	Settled	Enforcement of Governing Documents	Settlement Agreement
09-15-08	12-01-08	09-24	Association	Dismissed by Division	Maintain Landscape/Property	Dismissed by Division due to lack of service
06-06-08	12-08-08	08-119	Homeowner	Mediation	Architectural Requirements	Unsuccessful Mediation
04-29-08	12-09-08	08-107	Homeowner	Non-Binding Arbitration	Property Damage	Arbitration found in favor of Claimant. Each side pays for their own costs and fees.
10-22-08	12-24-08	09-38	Homeowner	Withdrawn by Claimant	Property Damage	Withdrawn by Claimant
03-05-08	12-24-08	08-82	Homeowner	Non-Binding Arbitration	Parking issues	Arbitration found in favor of Claimant. Each side pays for their own costs and fees.
05-09-08	12-24-08	08-109	Homeowner	Non-Binding Arbitration	Parking issues	Arbitration found in favor of Claimant. Each side pays for their own costs and fees.
05-19-08	12-30-08	08-113	Homeowner	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Each side pays for their own costs and fees.
02-26-08	01-08-09	08-76	Association	Mediation	Other Governing Documents	Successful Mediation
06-23-08	01-13-09	08-124	Homeowner	Binding Arbitration	Parking	Arbitration found in favor of Respondent. Each side pays for their own costs and fees.
08-14-08	01-14-09	09-16	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Respondent to reimburse Claimant \$8,903.33 in fines, fees and costs.
12-19-06	01-22-09	07-63	Homeowner	Settled	Maintain Landscape/Property	Settlement Agreement

Alternative Dispute Resolution Claims from 10-01-08 to 05-31-09 (Cont.)

DATE OPEN	DATE CLOSED	CLAIM	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
10-01-07	01-22-09	08-41	Homeowner	Non-Binding Arbitration	Enforcement of Governing Documents	Arbitration found in favor of Respondent. Claimant to reimburse Respondent \$71,160.82 in costs and fees.
04-25-08	01-22-09	08-101	Homeowner	Non-Binding Arbitration	Fiduciary Duties	Arbitration found in favor of Claimant. Each side pays for their own costs and fees.
08-14-08	01-22-09	09-15	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Respondent to reimburse Claimant \$17,853.22 in fines, fees and costs.
03-25-08	01-26-09	08-90	Association	Settled	Maintain Landscape/Property	Settlement Agreement
03-31-08	01-26-09	08-93	Association	Withdrawn by Claimant	Other Governing Documents	Withdrawn by Claimant
04-08-08	01-26-09	08-98	Homeowner	Mediation	Maintain Landscape/Property	Unsuccessful Mediation
06-16-08	01-29-09	08-122	Homeowner	Non-Binding Arbitration	Fines	Arbitration found in favor of Claimant. Respondent to reimburse Claimant amount to be determined by the Arbitrator at a later date.
02-27-07	02-03-09	07-82	Homeowner	Withdrawn by Claimant	Fiduciary Duties	Withdrawn by Claimant
06-25-08	02-03-09	08-127	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Respondent to reimburse Claimant \$7,484.06 in costs and fees.
02-27-07	02-03-09	07-82	Homeowner	Withdrawn by Claimant	Fiduciary Duties	Withdrawn by Claimant
06-25-08	02-03-09	08-127	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Respondent to reimburse Claimant \$7,484.06 in costs and fees.
09-11-07	02-05-09	08-30	Homeowner	Non-Binding Arbitration	Other Governing Documents/Association selling common area.	Arbitration found in favor of Respondent. Claimant to reimburse Respondent for attorney fees and costs.
11-05-08	02-23-09	09-45	Homeowner	Non-Binding Arbitration	Enforcement of Governing Documents	Arbitration found in favor of Claimant. Respondent to reimburse Claimant \$13,500.00 in costs and fees.
10-16-08	03-05-09	09-35	Homeowner	Non-Binding Arbitration	Additional Assessments	Arbitration found in favor of Respondent. Each side is responsible for its own fees and costs.
11-18-08	03-05-09	09-48	Homeowner	Non-Binding Arbitration	Fines	Arbitration found in favor of Respondent. Each side is responsible for its own fees and costs.
02-19-08	03-12-09	08-73	Homeowner	Settled	Other Governing Documents	Settlement Agreement
09-05-06	03-12-09	07-24	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitration found in favor of Claimant. Each side pays their own costs and fees.
12-31-07	03-17-09	08-62	Homeowner	Non-Binding Arbitration	Enforcement of Governing Documents	Arbitration found in favor of Claimant. Each side pays their own costs and fees.
11-21-08	03-24-09	09-57	Association	Settled	Other Governing Documents	Settlement Agreement

Alternative Dispute Resolution Claims from 10-01-08 to 05-31-09 (Cont.)

DATE OPEN	DATE CLOSED	CLAIM	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
08-13-08	03-25-09	09-14	Association	Non-Binding Arbitration	Pet Issues	Arbitration found in favor of Claimant. Respondent to pay Claimant \$3,741.16 in fines, fees and costs.
10-23-08	03-30-09	09-37	Homeowner	Settled	Property Damage	Settlement Agreement
12-01-08	03-30-09	09-59	Association	Settled	Additional Assessments	Settlement Agreement
11-05-08	04-02-09	09-44	Association	Non-Binding Arbitration	Other Governing Documents	Arbitration found in favor of Claimant. Respondent to pay Claimant \$18,760.50 in fines fees penalties and costs.
07-13-07	04-03-09	08-09	Homeowner	Non-Binding Arbitration	Maintain Landscape/Property	Combined with Claim # 09-83. Arbitration found in favor of Respondent. Respondent to pay Claimant \$30,458.85 in fines, fees and costs.
12-05-07	04-03-09	08-51	Homeowner	Non-Binding Arbitration	Enforcement of Governing Documents	Combined with Claim # 08-77. Arbitration found in favor of Respondent. Each side to pay for their own costs and fees.
02-28-08	04-03-09	08-77	Association	Non-Binding Arbitration	Maintain Landscape/Property	Combined with Claim # 08-51. Arbitration found in favor of Claimant. Respondent to pay Claimant \$3,000.00 in fines.
02-06-09	04-03-09	09-22	Homeowner	Non-Binding Arbitration	Maintain Landscape/Property	Combined with Claim # 08-09. Arbitration found in favor of Respondent. Respondent to pay Claimant \$30,458.85 in fines, fees and costs.
02-20-08	04-08-09	08-75	Homeowner	Non-Binding Arbitration	Enforcement of Governing Documents	Arbitration found in favor of Respondents. Each Respondent to be awarded costs and fees of \$7,500.00 each.
07-09-08	04-14-09	09-04	Association	Non-Binding Arbitration	Enforcement of Governing Documents	Arbitration found in favor of Claimant.
10-02-08	04-14-09	09-34	Homeowner	Non-Binding Arbitration	Enforcement of Governing Documents	Arbitration found in favor of Respondent. Claimant to reimburse Respondent \$,500.00 in attorney's fees.
12-05-08	04-14-09	09-60	Homeowner	Settled	Other Governing Documents	Settlement Agreement
02-06-08	04-17-09	08-69	Homeowner	Settled	Enforcement of Governing Documents	Settlement Agreement
11-24-08	04-17-09	09-61	Association	Non-Binding Arbitration	Maintain Landscape/Property	Claimant awarded \$1,370.00 in fines and \$3,198.50 in attorney's fees.
11-12-08	04-24-09	09-46	Homeowner	Non-Binding Arbitration	Fines	Arbitration found in favor of Claimant. Respondent to reimburse Claimant \$600.00. Each side pays for their own fees.
02-28-08	05-08-09	08-79	Homeowner	Settled	Fines	Settlement Agreement
06-25-08	05-08-09	08-125	Homeowner	Settled	Maintain Landscape/Property	Settlement Agreement
11-17-08	05-14-09	09-49	Homeowner	Settled	Maintain Landscape/Property	Settlement Agreement
01-08-09	05-21-09	09-75	Association	Non-Binding Arbitration	Maintain Landscape/Property	Claimant awarded \$24,000.00 in fines and \$5896.38 in attorney's fees.

Disciplinary Actions by the Commission for Common-Interest Communities and Condominium Hotels

Thomas Mitsky
Case No. IS-08-06-01-164
November 2008

Decision and Order

The allegations in the complaint were found to be true and the respondent found guilty of each of the violations alleged in the complaint.

Findings of Fact

Thomas Mitsky was served with a Notice of Hearing, Notice of Complaint, and the Notice of Documents by the Real Estate Division to which he failed to respond at all. The documents state that, acting as principal of Coyote Management, he acted as a community manager and was the manager of record for the Sunridge Manor Homeowners Association, a CIC subject to NRS 116, as well as Sunridge Estates Homeowners Association, Sunridge Heights Homeowners Association and Sweetbriar Homeowners Association. In addition, Mitsky also represented himself as qualified to act as a community manager in Nevada when questioned by board members. Lastly, Mitsky received compensation in performing those duties.

A hearing was held Sept. 29, 2008 before the Commission for Common-Interest Communities and Condominium Hotels.

Conclusions of Law

Respondent was properly served with the Complaint and Notice of Hearing, Notice of Complaint, and Notice of Documents, was given notice of the hearing, and failed to respond. Pursuant to NAC 116.580, the respondent having failed to respond to the notices and to appear at the hearing, the Commission could accept the charges as true.

Discipline

1. For the first violation, respondent ordered to pay \$10,002 to the Division within six months this Order. Such sum represents half of the amount charged to Sunridge Estates Homeowners Association, during the time that respondent acted as its community manager without holding a community management certificate;

- 2. For the second violation, respondent ordered to pay \$5,000 to the Division within six months;
- 3. For the third violation, respondent ordered to pay \$5,000 to the Division within six months of the date that this order is signed;
- 4. The respondent ordered to pay \$819.75, which represents half of the costs of the hearing, to the Division within six months of this order.
- 5. Respondent ordered to cease and desist from engaging in any activities for which a community management certificate is required and from representing himself as qualified to perform as such until such time as he has been properly

certified as a community manager in the state of Nevada and has abided by this order.

6. The Division may institute debt collection proceedings for any fines and/or costs ordered above, or unpaid portions thereof, which have not been paid within six months of the effective date of this order.

7. The violations and Order entered by the Commission in this case shall be published in "Community Insights".

Actions/Decisions

Acts of the Commission for Common-Interest Communities and its appointed administrative law judges are not published in this newsletter by the Real Estate Division until after the 30-day period for filing under Judicial Review. If a stay on discipline is issued by the court, the matter is not published until the final outcome of the review.

A respondent's certificate is automatically suspended for failure to comply with a commission order, and the division may institute debt collection proceedings to recover fines and costs.

The division does not publish names of persons whose certificate applications are denied.

Allegations/Stipulations

Stipulations occur when both the respondent and the Division have agreed to conditions reviewed and accepted by both sides. A stipulation may or may not be an admission of guilt. Stipulations by administrative law judges are presented to the commission for review and acceptance.

Disciplinary Actions by the Commission for Common-Interest Communities and Condominium Hotels

Continued from Page 9

Harry Randolph Case No. IS-08-06-01-164 November 2008

Findings of Fact

Harry Randolph was served with a Complaint and Notice of Hearing, Notice of Complaint, and the Notice of Documents by the Real Estate Division to which he failed to respond at all. The documents state that, acting as principal of Coyote Management, he acted as a community manager and was the manager of record for the Sunridge Manor Homeowners Association, as well as Sunridge Estates Homeowners Association, Sunridge Heights Homeowners Association and Sweetbriar Homeowners Association, all CICs subject to NRS 116. In addition, Randolph also represented himself as qualified to act as a community manager in Nevada when questioned by board members. Lastly, Randolph received compensation in performing those duties.

A hearing was held Sept. 29, 2008 before the Commission for Common-Interest Communities and Condominium Hotels.

Conclusions of Law

Respondent was properly served with the Complaint and Notice of Hearing, Notice of Complaint, and Notice of Documents, was given notice of the hearing, and failed to respond. Pursuant to NAC 116.580, the respondent having failed to respond to the notices and to appear at the hearing, the Commission could accept the charges as true.

Decision and Order

The allegations in the complaint were found to be true and the respondent found guilty of each of the violations alleged in the complaint.

Discipline

1. Randolph ordered to pay \$10,002 to the Division within six months this order. Such sum represents half of the amount charged to Sunridge Estates Homeowners Association, during the time that respondent acted as its community manager without holding a community man-

agement certificate;

2. The respondent ordered to pay \$819.75, which represents half of the costs of the hearing, to the Division within six months of this order.

3. Respondent ordered to cease and desist from engaging in any activities for which a community management certificate is required and from representing himself to perform as such until such time as he has been properly certified as a community manager and abided by this order.

4. The Division may institute debt collection proceedings for any fines and/or costs ordered above, or unpaid portions thereof, which have not been paid within six months of the effective date of this order.

5. The violations and Order shall be published in "Community Insights".

Virginia City Highlands Property Owners Association, Board of Directors Case No. IS-08-06-01-164 November 2008

Parties

A stipulation was entered by and between the Real Estate Division through its Administrator, Ann M. McDermott, and respondents, Virginia City Highlands Property Owners Association and its board of directors. The association, located in Virginia City, Nevada, is subject to NRS 116 and NAC 116.

Jurisdiction

At all relevant times during the events of the complaint, the association's board of directors was comprised as follows: a. Rita M. Lumos (President), William Lewis (First Vice President), c. Stephen Morrow (Second Vice President), d. Mary Talent-Stewart (Secretary), and e. C. Michael Lupo (Treasurer), collectively referred to as "Former Members".

Factual Allegations

The following occurred while the Former Members were incumbent on the board of directors. On or about Oct. 24, 2007, association member Debra Gravenstein submitted an Intervention Affidavit to the Division alleging violations of NRS 116 by the Former Members.

Disciplinary Actions by the Commission for Common-Interest Communities and Condominium Hotels

The Division responded on or about Feb. 27, 2008, via a certified letter to the association and one of the Former Members, Rita M. Lumos. Ms. Lumos replied to the request for information on March 17, 2008, with an attached letter dated March 14, 2008.

The Division alleged that on or about June 28, 2007, the association's Former Members held a meeting, with all Former Members present, to discuss roads and/or road construction, which was part of their jurisdiction as board members.

On or about June 24, 2007, Ms. Gravenstein advised Ms. Lumos via e-mail that the proposed meeting of June 28, 2007, would not be legal under NRS 116. Ms. Lumos promptly replied to Ms. Gravenstein, stating, inter alia, that "Debi, I appreciate your concern, but I do not agree with it. As I pointed out, this is not a regular meeting, no decisions will be made. There won't be an agenda. It is a discussion with the road people and hopefully some construction folks about our road construction."

The Division alleged that the meeting on June 28, 2007, was held without notice to the unit owners as required by NRS 116.31083(2) and without a proper agenda provided to the unit owners in violation of NRS 116.31083(4).

The Division further alleged that a section entitled "Road Report" was listed as a discussion/action item on multiple agendas of the association before the June 28, 2007, meeting, among them: January 9, 2007, February 13, 2007, March 13, 2007, April 10, 2007, May 8, 2007, and June 12, 2007. Finally, the division alleged that the association and its Former Members were aware that discussions such as those that occurred on June 28, 2007, required compliance with NRS 116.31083.

Alleged Violations of Law

By holding a meeting with all of the board of directors present to discuss road construction issues within their jurisdiction without providing proper notice and agenda of the meeting, the association's Former Members were in violation of NRS 116.31083(2) and/or NRS 116.31083(4) and are subject to discipline as specified in NRS 116.785. No "workshops" are authorized because when a quorum of the association's board meets to discuss matters within their custody or control, notice and agendas must be provided as set forth herein.

Settlement

The Division was prepared to put on a case based on the Complaint filed with Commission alleging the above offenses, and the Division is authorized under NRS 116.785 for each violation of NRS 116.31083 to seek the imposition of a fine of up to \$1,000 for each offense alleged. The association and respondents (current members) were prepared to defend any such complaint; however, the parties agreed to settle upon the following terms and conditions:

1. Respondents agreed to pay the Division \$250 in administrative fines.
2. Respondents agreed that "workshops" are not authorized where a quorum of the association meets to discuss matters within their custody or control unless proper notice, agendas, and other requirements of NRS 116 and its regulations are met.
3. The Division agreed not to pursue any other or greater remedies or fines in connection with this case.
4. The Division does not concede any defense, and the parties agree that the Division will not publicize the matter, except as set forth below, and that once this stipulation is approved and fully performed, the Division will close its file in this matter, although public records laws may require the Division to release information in certain cases.
5. Debt collection actions for the unpaid administrative fines may be instituted if the fine is not paid within the allotted time. If the fine is not paid, the Division may, at its option, rescind the stipulation and proceed with the Complaint.
6. Respondents waive their rights to a hearing with certain due process rights.
7. The Division may publish a summary of this stipulation in the "Community Insights" publication.
8. Each party shall bear its own attorney's fees .

STIPULATION IS NOT EVIDENCE. Neither this Stipulation nor any statements made concerning this Stipulation may be discussed or introduced into evidence at the hearing of the Complaint, if the Division must ultimately put on a case based on the Complaint filed in this matter.



Anderson returns for encore at Real Estate

After 17 months away, Gail Anderson has returned to the Real Estate Division for a second stint as administrator. In February she returned to the office in which she served for five years – just in time to head north to Carson City for a very active 2009 Legislative session.

In addition to re-claiming her old duties, Anderson is acting administrator for the Manufactured Housing Division, which, like Real Estate, is located in the Bradley Building, 2501 E. Sahara.

Anderson left the Division in 2007 to become deputy director for the Department of Business and Industry, which oversees 16 entities, including Real Estate and Manufactured Housing.

With a background as a school principal, Anderson has been a proponent of homeowner education as the favored means of maintaining harmony in Nevada’s nearly 3,000 common-interest communities.

The Office of the Ombudsman welcomes Anderson’s return and the experience she brings back to the Division.

Desk

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Two more outreach events are planned for the fall. There will be an event in September to reach Spanish-speaking HOA residents, focused on basic concepts of HOA living, such as rights and responsibilities.

Also, there will be a full day of training Oct. 16 at the Bradley Building on the fundamentals of HOA governance. While there is plenty of useful material for boards and homeowners generally, we specifically wish to see homeowners and board members from self-managed associations attend. Nicholas and I will teach in the morning regarding executive board elections, association meetings, and record-keeping. In the afternoon, Sonya Meriweather and staff will offer a review the registration process and other items of business association boards may have with our office.

More specific dates, times and locations may change. Check our Web site or call us for updates. Information on all of our classes can be obtained from our Web site, www.red.state.nv.us. Click on the link: Common Interest Communities and Condominium Hotels. Everyone’s invited and we hope you will join us.

FRSRT STD
U.S. POSTAGE
PAID
Carson City, NV 89701
PERMIT #15

3820
State of Nevada
Department of Business & Industry
Real Estate Division
2501 E. Sahara Avenue, Suite 202
Las Vegas, NV 89104-4137