

# COMMUNITY INSIGHTS

VOLUME IX, ISSUE II

Department of Business and Industry, Real Estate Division

Winter 2013

## *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 and board members in handling issues that may arise while living in a common-interest community.

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## *Join our e-mail list*

Want to receive updates on available classes, changes to the law, answers to tricky compliance issues and other news affecting HOAs? Join the Ombudsman e-mail list. Updates are sent a couple times per week and we do not share your e-mail with anyone. To join, call (702) 486-4480 or e-mail to [omb-classes@red.state.nv.us](mailto:omb-classes@red.state.nv.us).

## *From the Ombudsman's Desk*

# Ombudsman begins new question-and-answer forum

## Office hosts regular workshops to address compliance inquiries

This summer, I had the pleasure to highlight the Ombudsman's Referee Program, a new way for association residents to resolve disputes. It is with the same enthusiasm I am pleased to announce that the Ombudsman's Office has begun hosting a weekly Q&A Forum at no cost to owners and board members every Friday at the Bradley Building!

This forum is the venue for owners and board members to ask questions and receive answers to general questions relating to issues that arise within associations. The forum is hosted by me plus the office's two educators, Nick Haley and Ken Richardson.

Select questions will be posted on our Web site, and also "blasted" to all who have signed up for our email list. If you have not signed up to receive our email blasts, please consider doing so. To be included in our e-blasts, send your request to Ken Richardson at [omb-classes@red.state.nv.us](mailto:omb-classes@red.state.nv.us).

As I like to say frequently, education is the proactive approach to avoid problems down the road in



your HOA. However, general common courtesy and common sense are without question essential to harmonious association living.

This includes effective communication with those individuals you call neighbors.

Toward that goal, our office is pleased to announce a new class on effective communication to help improve upon skills such as listening, delivery of message, tone and patience. The class is one of several in the rotation that Ken offers on an ongoing basis; check the schedule for times and locations.

On that note, I want to address an important aspect of communication, a nonverbal act that helps move relationships forward: the act of forgiveness.

A major hurdle I find in performing mediations on behalf of homeowners and board members is the inability to forgive. I am speaking of those cases where individuals have decided to hold on to the mistakes of the board or homeowner to the point where moving forward is secondary to the vindication the

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## COMMUNITY INSIGHTS

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DEPARTMENT OF BUSINESS  
AND INDUSTRY

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## COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM HOTELS

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Homeowner Member

**Robert Frank, Commissioner**  
Homeowner Member

## Commissioner's Corner

# New commissioner reflects on duties, community issues



By **JONATHAN FRIEDRICH**  
CICCH COMMISSIONER

Recently I was appointed by Gov. Brian Sandoval as one of three homeowner representatives on the Nevada Commission for Common-Interest Communities and Condominium Hotels.

I thank the governor for this appointment and opportunity to

serve the State.

I want to take this opportunity to introduce myself. Ten years ago, I moved to Las Vegas and purchased my home in Rancho Bel Air, an older association having 120 homes, and served one year on its board of directors. Previously, I had served 12 years on the Old Westbury Planning Board on Long Island in New York.

I was a general contractor in the residential and commercial construction industry. Since 1989, I have also served as a non-attorney arbitrator with the American Arbitrators Association where I have heard numerous cases involving my area of expertise, the construction industry.

As one of the three homeowners representatives, I come to the Commission with no pecuniary interest to promote and no involvement with any state or national organization that lobbies for these associations or their management companies. As an association resident and former board member, I have seen the benefits and drawbacks of such affiliations.

Over the years, I have sought and gained a few legislative reforms for owners who have been negatively affected by associations and their agents. My goal is to ensure that homeowners are protected from abuses and the loss of funds paid to associations, and to be a strong voice for all homeowners, including those who believe their association board has violated state law.

This Commission was created in 2003 with the realization that owners living in associations needed

*See COMMISSIONER on Page 4*

## Governor names Breslow director of Business & Industry



**Bruce Breslow**

for the administration of all provisions of law relating to the jurisdiction, duties and functions of 14 diverse agencies.

Before his appointment to B&I, Breslow served as

Gov. Brian Sandoval appointed Bruce Breslow as the Director of the Department of Business and Industry in November 2012.

As director, Mr. Breslow serves as a member of the governor's cabinet, advising the Nevada's chief executive on policy matters and public administration. He is responsible

the Director of the Department of Motor Vehicles where he pioneered innovative solutions, which led to an improved customer experience. Previously, he served as the Executive Director of the Nevada Agency for Nuclear Projects and as Commissioner and Administrative Law Judge for the Transportation Services Agency under Gov. Kenny Guinn.

Breslow is a former Mayor of Sparks. As mayor, Breslow led an effort to convert an oil-blighted gravel pit into one of Sparks' newest recreational attractions, the Sparks Marina. From 2003-2005, he served as Chairman of the Employee Management Committee for the State of Nevada.

Breslow earned a bachelor's degree in journalism from the University of Missouri and is in the Nevada Broadcasting Hall of Fame. Breslow has also been an international commentator for the last eight summer Olympic Games.

## Ombudman's Q & A Forum

### Participants decide how ADR complaints shall be resolved

**Q:** When a complaint is referred to ADR (Alternative Dispute Resolution), who decides whether or not it goes to binding arbitration, non-binding arbitration or mediation?

**A:** The parties involved (claimant and respondent) must agree on the process to be used. If there is no agreement, non-binding arbitration is the default.

**Q:** Can an association create a requirement that all homes in the community must be owner-occupied?

**A:** No. If the declaration does not already restrict occupancy to unit owners, it may not be added.

**Q:** When must a removal election be held once the petition is submitted to the board or manager?

**A:** The removal election must be held within 90 days after the president receives a legal petition.

**Q:** Can the manager/custodian of records alter or change the official documents of the association?

**A:** No. Documents such as board minutes or contracts cannot be altered without following a formal process. Proposed changes would need to be brought back before the board for discussion and action.

**Q:** Who is authorized to participate in the discussion during the owners' comment periods at the beginning and end of board meetings?

**A:** The owners' comment periods described in NRS

116.31083 provide owners with an opportunity to address the board. Although the period is primarily for brief statements, there may be participants such as the community manager or legal counsel, who can offer information on owner concerns.

**Q:** How can owners ensure the integrity of the election process?

**A:** The election process must be conducted per NRS 116.31034. That process includes a secret ballot returned in a designated envelope to the manager or designated recipient, who opens and counts returned ballots at a unit owners' meeting. Once the election is over, all election-related documents become available for inspection by any unit owner. A unit owner's diligence in inspecting the records is an important safeguard in the process. If irregularities are discovered or suspected, the owner may file an Intervention Affidavit. Under NRS 116.31107 tampering with an election is a felony.

*Have a question on NRS 116 or your association? You may contact the Ombudsman's Office by phone at (702) 486-4480 or toll-free statewide at 1-877-829-9907; by email at [kerichardson@red.state.nv.us](mailto:kerichardson@red.state.nv.us) or [nhaley@red.state.nv.us](mailto:nhaley@red.state.nv.us); or by attending one of our weekly forum events, which are posted at <http://red.state.nv.us/CIC/questionsandanswers.htm>.*

## Longtime CIC homeowner advocates join Commission

Jonathan Friedrich and Robert Frank, longtime homeowner advocates regarding association issues, both recently received appointments to the Commission on Common-Interest Communities and Condominium Hotels.

Friedrich was named to the Commission in August and attended his first meeting in October. He was named to one of two seats for Nevada association unit owners who are not required to have served on a board of directors. Friedrich is a resident of the Rancho Bel Air Homeowners' Association, located in a long-established area of Las Vegas.

Friedrich has been active in association issues for nearly a decade, having attended many Com-

mission meetings as a citizen. He has served as a lobbyist before the Nevada Legislature and is a longtime arbitrator and mediator.

Frank, a resident of Sun City Anthem, was appointed in November and attended his first meeting in December. He was named to a seat for which one must be a unit owner and have served as a director for an association in Nevada.

Frank, a retired U.S Air Force Colonel, served various public and private entities where he continued to work in the fields of computer systems and Internet business technologies. He graduated from Oklahoma and Auburn universities with degrees in business.

## Ombudsman facilitates new election for Autumn Chase HOA

When the Commission on Common-Interest Communities and Condominium Hotels took the unprecedented step in removing the entire board of the Autumn Chase Owners' Association in connection with the October 2012 hearing against Joseph and Barbara Bitsky and Hellen Murphy, the association was left with no one in charge.

The association needed a new election to put new directors to the difficult task of transitioning accounts, setting up records, hiring a manager and restoring trust, but with no one authorized to initiate the process, the association was at an impasse.

As part of the Commission's ruling, the Ombudsman's Office agreed to assist the association in holding a new election for board members. Step-by-

step instructions, along with a timeline, helped two volunteers from the association to understand what they needed to do. In addition, the Ombudsman accepted the ballots from homeowners, presented them at a meeting, and conducted the count.

The volunteers obtained the necessary supplies at their own expense; prepared envelopes, ballots and election instructions; and mailed out materials according to the timeline.

Following the election, three new board members took office and promptly held an organizational meeting to select officers. They briefly discussed their next meeting and what items upon which they would need to act. They were also presented with records and monies kept in trust by the Division.

## Commissioner

*Continued from Page 2*

protection. Its creation was a crucial step in the history of NRS 116, the state law for common-interest communities.

Unfortunately, in the past few years we have heard much through media coverage about corruption in many associations in our state. As a former state attorney general and federal judge, Gov. Sandoval saw the arrests and convictions of association volunteers and professionals. They have been disturbing to all who have seen them.

On Oct. 12, 2012, the Commission concluded the case involving Joseph and Barbara Bitsky and another board member. The allegations were extensive, including claims of misappropriation of funds

and denial of elections. The Commission ordered all three board members removed from office and fined the Bitskys a combined \$115,797.22, including restitution to the association and reimbursement to the state for the cost of the prosecution. This case demonstrated some very serious abuses by a board.

Sadly, there are some associations where abuses occur. If you become aware of such misconduct, it is appropriate to report it to the Real Estate Division and file a complaint. There are different processes for complaints against associations and board members and complaints against managers. The Ombudsman may assist in explaining how each of these processes works. Do not wait for someone else to do it.

## Alternative Dispute Resolution Claims From May 29, 2012 to November 5, 2012

DATE OPEN	DATE CLOSED	CLAIM	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
5/29/2012	7/23/2012	12-106	Homeowner	Settlement	Property Damage	Settlement
4/3/2012	7/27/2012	12-87	Association	Non-Binding Arbitration	Enforcement of Governing Documents	Arbitration found in favor of Association due to a failure to appear default. Association is awarded \$11,600.00 in fines, \$7,907.58 in attorney fees, and \$2,029.95 in arbitrator fees.
3/7/2011	7/30/2012	11-61	Homeowner	Settlement	Property Damage	Settlement
3/8/2012	7/31/2012	12-78	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitration found in favor of association. Association is awarded \$1,345.00 in past due assessments and \$3,327 in attorney fees. Homeowner is ordered to pay all \$1,500 arbitrator fees.
4/27/2012	7/31/2012	12-99	Homeowner	Settlement	Property Damage	Settlement
11/21/2011	8/3/2012	12-45	Homeowner	Non-Binding Arbitration	Collection of Fees Improperly	Arbitration found in favor of homeowner. Association to issue a refund of \$811.50 to the homeowner for assessment fees and collection costs that were overpaid.
6/7/2012	8/3/2012	12-109	Association	Dismissed by Division	Property Damage	Dismissed by Division due to lack of service upon respondent.
9/6/2011	8/3/2012	12-19	Homeowner	Non-Binding Arbitration	Collection of Fees Improperly	Arbitration found for association. Third party is awarded \$4,731 in past due assessments and collection costs. Association is awarded \$480.47 in arbitrator fees and \$9,846.46 in attorney fees.
9/9/2011	8/9/2012	12-7	Association	Mediation	Transfer from Developer to Association	Mediation Unsuccessful
6/18/2012	8/14/2012	12-115	Association	Dismissed by Division	Delinquent Assessments	Dismissed by Division due to lack of service upon Respondent
4/4/2012	8/15/2012	12-93	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitration found in favor of Association by default. Association is awarded \$12,760.77 in past due assessments and late fees, \$1,527.45 in attorney fees and \$1,255.90 in arbitrator fees.
5/17/2012	8/16/2012	12-105	Association	Dismissed by Division	Delinquent Assessments	Dismissed by Division per request from Association. No response had been received from the homeowner.

## Alternative Dispute Resolution Claims From January 1, 2012 to June 30, 2012 Cont.

DATE OPEN	DATE CLOSED	CLAIM	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
4/27/2012	8/27/2012	12-101	Homeowner	Dismissed by Arbitrator	Enforcement of Governing Documents	Dismissed by Arbitrator
6/22/2012	8/27/2012	12-117	Association	Dismissed by Division	Delinquent Assessments	Dismissed by Division
2/13/2012	9/5/2012	12-63	Homeowner	Non-Binding Arbitration	Home Placed Into Foreclosure Improperly	Arbitration found in favor of homeowner: Association is ordered to bring homeowner to current status, refund any payments beyond normal assessments and revise their collection policy.
9/28/2011	9/5/2012	12-24	Homeowner	Non-Binding Arbitration	Collection of Fees Improperly	Arbitration found in favor of association and ruled that the amounts sought in late fees and assessments were in compliance with NRS 116 statutes.
1/12/2012	9/7/2012	12-53	Homeowner	Non-Binding Arbitration	Collection of Fees Improperly	Arbitration found in favor of homeowner. Homeowner is awarded \$2,045.07 in refunded superpriority lien charges. Parties are to pay their own attorney's fees and split the arbitrator fees.
2/1/2012	9/11/2012	12-60	Homeowner	Mediation	Breach of Fiduciary Duty	Mediation unsuccessful
6/18/2012	9/14/2012	12-116	Association	Withdrawn by Claimant	Delinquent Assessments	Withdrawn by claimant
6/26/2012	9/17/2012	12-119	Homeowner	Withdrawn by Claimant	Collection of Fees Improperly	Withdrawn by claimant
3/7/2012	9/18/2012	12-77	Homeowner	Mediation	Enforcement of Governing Documents	Mediation unsuccessful
8/31/2011	9/19/2012	13-12	Homeowner	Settlement	Property Damage	Settlement
1/30/2012	9/19/2012	12-58	Homeowner	Non-Binding Arbitration	Collection of Fees Improperly	Arbitration found in favor of associations (Respondents) in which the homeowners' request to pay off a super priority lien prior to foreclosure and without attorney's fees and costs, was denied.
5/11/2012	10/5/2012	12-104	Association	Mediation	Enforcement of Governing Documents	Mediation Unsuccessful
6/13/2012	11/5/2012	12-111	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitration found in favor of association by default. Homeowner did not participate in a timely manner. Association is awarded \$6,287.99 in past due assessments, collection fees and costs.

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

Jean Krym  
CIS 12-08-27-036  
August 2012  
Community Manager

The matter came before the Commission on Aug. 13, 2012. The respondent failed to appear, failed to file an answer to the complaint, and failed to request a continuance of the hearing. The Commission, having heard the evidence, entered the following Findings of Fact, Conclusions of Law and Order.

**Findings of Fact:** The Commission, based upon the evidence presented during the hearing, finds that there is substantial evidence to establish the following findings.

The respondent was a community manager with certificate number CAM.0001432.

The Division sent a copy of the complaint, Notice of Complaint and Obligation to Respond, the Notice of Hearing, and related documents.

The respondent did not answer the complaint or request a continuance.

The Division requested that the charges in the Complaint be accepted as true and to enter a default against the respondent.

**Conclusions of Law:** The respondent was given proper notice of the hearing and an opportunity to answer the Complaint.

The Division met its burden regarding the factual allegations in the Complaint and the violations of the law in the Complaint.

The Commission determined the charges are to be considered true.

**Order:** The respondent shall pay to the Division a total fine of \$13,306.50. The total fine reflects \$12,000 for committing violations of the law and

\$1,306.50 for the Division's attorney's fees and costs of the investigation and hearing. The total amount is due to the Division within 60 days of this order.

The respondent's certificate is revoked.

Bernard Spears, Julie Salazar and Parkridge  
Condominium Homeowners' Association  
IS 10-2074  
August 2012  
Board of Directors

The matter came before the Commission on Aug. 13, 2012. Respondent Bernard Spears and

Parkridge Condominium Homeowners' Association, represented by Sheayle Lynn Wellman, appeared at the hearing representing themselves. Respondent Julie Salazar failed to appear.

Respondents Spears and Salazar each previously filed an answer to the Complaint.

After hearing the allegations, the respective arguments, and having considered the evidence introduced by the parties and being fully advised,

the Commission entered the following Findings of Fact, Conclusions of Law and Order.

**Findings of Fact:** The Commission, based upon the evidence presented during the hearing, finds that there is substantial evidence to establish the following findings.

The association became self-managed after respondents Spears and Salazar, along with another board member, held an emergency meeting to terminate the association's community manager in August 2009. Complainant Adelina Smith served on the executive board at this time but was not present for the meeting. Respondents did not have minutes for the meeting in which they allegedly

### **Actions/ Decisions**

Acts of the Commission for Common-Interest Communities and Condominium Hotels 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.

### **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.

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

discussed and took action on termination.

The association's most recent reserve study was performed in July 2006. The association's budget is approximately \$96,000 annually and no financial statements were prepared for 2010 and 2011.

Spears hired a handyman named "Russell Bright" and paid him \$1,300 with a check dated June 8, 2009 to perform pool maintenance work. There are no association minutes showing executive board approval of the pool work. Bright was also not licensed to perform the work by the Nevada State Contractors Board.

Spears hired another man without a contractor's license to paint association buildings. Spears was fined \$1,100, plus costs of \$181.10, by the Contractors Board. The association paid the fine.

An audit of the association's bank records revealed 30 checks totaling \$11,553.50 were paid to Spears in 2009-2011. Spears, who works as handyman for a living, alleges the checks were for reimbursement of expenses he incurred on behalf of the association, but there are no records to reflect such expenses.

Dozens of association checks dated between February 2009 and August 2010 were endorsed by Salazar, Spears or both and made payable to Salazar, Spears or "petty cash." In some instances, Spears and Salazar made checks payable to themselves and had only their own signatures on the check.

Checks made out to Spears were written for amounts ranging from \$139.98 to \$1,300.

Salazar received 41 checks from the association beginning in March 2009 through 2010 totaling \$33,045. She withdrew a total of \$28,045 owing to the fact that a single check for \$5,000 was declined by the bank as fraudulent. Salazar failed to provide any evidence that the funds she received went for any legitimate association expense.

Spears filed a police report after finding out about the \$5,000 check Salazar tried to deposit. Criminal charges against Salazar are pending.

In June 2010, Adelina Smith submitted a petition for an audit of the association.

On or about September 15, 2010, Smith received in the mail the petition for audit with vulgar and offensive statements written across the pages, including such statements as 'you do not live here a\_\_hole,' "f\_\_ you bitch," and "eat sh\_\_." Smith

believes the handwriting is that of Spears.

**Conclusions of Law:** Spears violated NRS 116.31153(2) by not having two signatures on 23 checks he wrote to himself from the association's account.

Salazar violated NRS 116.31153(2) by not having two signatures on 22 checks she wrote to herself from the association's account.

Spears violated NRS 116.3103 (through NAC 116.405[3]) by committing an act that amounts to incompetence and gross negligence when he hired an unlicensed contractor and received a fine from the Contractors Board.

Spears violated NRS 116.31187(1) by receiving compensation from the association in exchange for services he alleged he provided to the association while serving on the board and as an officer. Spears violated NRS 116.3103 (through NAC 116.405[1 and 2]) by acting outside the scope of his authority and for reasons of self-interest and personal gain when he controlled the association by performing unauthorized services for the association and accepting compensation.

Salazar violated NRS 116.3103 (through NAC 116.405[1, 2 and 3]) by acting outside the scope of her authority, for reasons of self-interest and personal gain, and by committing acts that amount to incompetence and intentional wrongdoing by taking money from the association 40 times.

Salazar violated NRS 116.3103 (through NAC 116.405[1, 2 and 3]) by acting outside the scope of her authority, for reasons of self-interest and personal gain, and by committing acts that amount to incompetence and intentional wrongdoing by forging a check and attempting to deposit it into her own account.

Spears violated NRS 116.3103 (through NAC 116.405[1, 3 and 8]) by acting outside the scope of his authority, committing acts that amount to incompetence, and failing to obtain three bids when he hired Russell Bright, who did not have a contractor's license and was paid \$1,300 for pool work.

Spears and Salazar violated NRS 116.3103 by failing to prepare financial statements as required by NAC 116.405(8)(j) and NAC 116.451 for 2010. Spears committed the same violation for 2011.

**Order:** Spears was immediately removed as direc-



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

tor and as president of the association as of Aug. 15, 2012.

Spears must return any keys to association property and certify in writing that he has complied with this order.

Spears must cooperate with any actions so that his name will be removed from all association bank accounts and shall turn over all books and records within five days.

Spears may not serve on the board of any homeowners' association in Nevada for three years. Should Spears seek to serve on a board after three years, he must first obtain educational classes offered by the Division before becoming eligible and shall have paid all fines from this proceeding.



Spears shall pay a fine of \$4,000 plus one-half of the cost of the investigation and hearing in the amount of \$5,487.35, all to be paid within 90 days.

Salazar shall not serve on any board of directors for a Nevada homeowners' association indefinitely.

Salazar shall pay a fine of \$9,000 plus one-half the cost of the investigation and hearing in the amount of \$5,487.30 within 30 days. In addition, she shall pay full restitution to the association within 90 days in the amount of \$28,045 to the extent that any portion is not repaid relating to any criminal sentence.

Salazar shall within five days turn over all association books and records under her custody to the association.

The association shall remove Bernard Spears from all association bank accounts within five days.

The association shall immediately commence a

new election, which shall be for all five board seats, in compliance with NRS 116 and shall file the names and contact information of the board members within 10 calendar days with the Division. The association must have an independent firm collect the ballots and present them at the election meeting and that firm may not be Liberty Tax Service.

All board members shall take a minimum of four different classes ordered by the Ombudsman in the area of fiscal and fiduciary responsibilities of board members, record keeping, meetings and elections no later than six months from the date of the election.

The association shall hire a licensed community manager within 90 days and shall maintain a manager for at least five years. The association shall notify the Division within 10 days of hiring a community manager.

The association shall adopt a collection policy and investment policy, which shall be provided to the Division by Dec. 1, 2012. The investment policy comply with NRS 116.31153(1 and 2) dealing with signatures on bank accounts.

The association shall cause to be prepared an interim financial statement through Aug. 31, 2012 in accordance with NAC 116.451, which requires the statement to be prepared on the accrual basis and to use fund accounting as identified in NAC 116.453. The association shall provide the financial statement prepared by Griswold Property Management to the Division by September 30, 2012.

The association shall engage an independent certified public accountant and provide proof of compliance to the Division.

The association shall obtain an updated reserve study and ratify a 2013 budget, and provide both to the Division by Dec. 1, 2012. The association shall cause an Agreed-Upon Procedures Report to be prepared by a CPA for the reserve account from Jan. 1, 2009, through Aug. 31, 2012, which should detail all sources and uses of cash and the supporting documentation for any withdrawals from the reserve account. This, too, shall be provided to the Division by Dec. 1, 2012.

Finally, the association's president shall appear before the Commission at the December 2012 hearing to provide an update.

## Compliance Corner

# Managers must accept assessment payments

Community managers must accept payment from homeowners for assessments and apply them as such, even if the owner's account is in collections.

Failing to do so is among the prohibited acts listed in NAC 116A.345.

Despite the prohibition, some managers cut off contact once a past-due account goes to collections, according to Sharon Jackson, Supervisory Compliance Investigator for the Real Estate Division.

"Managers need to understand that they must accept assessment payments and apply them correctly and promptly," she said. "This duty doesn't disappear when the owner is sent to collections."

Refusal to accept an assessment payment, or to credit it in a timely manner, has serious negative effects on the unit owner. Late assessments bear

late fees and interest, making it more difficult for an owner already struggling to return to good standing. Associations often send accounts that are delinquent into collections, where attorney's fees and collection costs can quickly skyrocket.

"Associations are within their rights to enforce lawful collection policies, but they also have an obligation to honor payments," Jackson said. "Managers should consider whether or not a collection policy will interfere with their lawful obligations."

She points out that associations and owners should be mindful of changes to payment options as well. Automatic payment programs designed to ensure timely payments, along with other electronic payment systems, may backfire if the program is terminated without an owner's knowledge.

# Associations restricted in charges for resale packages

Associations are limited in what they may charge owners for the resale packages required for home sales and may not add fees for services the owner did not request and that are not necessary to fulfill the record request.

Homeowners must provide a resale package to a prospective buyer for the sale of an existing home in a common-interest community, per NRS 116.4109. The association, in turn, must provide the resale package to the owner and do so within 10 days of receipt of a written request.

NAC 116.465 limits associations to \$160 for preparing the certificate they must provide to home

sellers. Associations may charge an additional \$125 only if the owner requests expedited delivery and the association provides it within three days.

Beyond the certificate, the resale package includes a full copy of the governing documents, an information statement found in NRS 116.41095, and a copy of the operating budget and financial statement of the association. These are records for which the association may charge the standard amount for providing records to a unit owner: electronic copies are free and paper copies are \$.25 per page for the first 10 pages and \$.10 per page for each additional page.

## DESK

### *Continued from Page 1*

aggrieved party feels he or she deserves. This makes correcting mistakes and moving forward extremely difficult.

I tell constituents during my informal conferences that the mediations are not an adversarial venue. To the contrary, when there is full acknowledgement of "what is," there is room for compromise, so that both of the parties are able to move forward with a certain level of acceptance and forgiveness.

Bishop T.D. Jakes said the inability to forgive is

like drinking poison and expecting the other person to die. Indeed, resentment based on a failure to forgive another allows anger to permeate and poison one's self.

I strongly encourage those considering filing an Intervention Affidavit to do so only with the spirit of compromise. This means accepting that the resolution of an alleged dispute also is within your power to forgive. It is only where compromise is present that resolution can be reached.

All positive changes start with a positive attitude and willingness to compromise.

# Division clarifies position on superpriority liens

The Nevada Real Estate Division released an Advisory Opinion interpreting the law that defines the superpriority lien homeowner associations have for delinquent assessments. The opinion provides associations a better understanding of the law by which to act in the best interest of their members.

Nevada law enables the recovery of past-due assessments through the establishment of a “superpriority lien.” This priority lien status helps ensure the HOA’s interest in collecting as much as nine months of unpaid assessments.

The opinion clarifies what constitutes a superpriority lien and what does not. It finds that the superpriority portion is limited to not more than nine months of assessments as reflected in the budget plus any charges incurred by the association for the abatement of nuisances. The law does not



specify that “costs of collecting” (as defined by NRS 116.310313) are a lien against a unit and therefore are not part of the superpriority lien either.

Central to the controversy relating to HOA recovery of delinquent assessments is the practice of turning over debts to collection agencies and adding the costs charged by those firms to the lien placed against the property. Since costs of collecting are not a lien against a unit, inclusion of these costs in the lien is not allowed. Fees and costs incurred by the association in foreclosing the association’s lien are a personal liability of the homeowner. If the homeowner does not reimburse the association for these expenses, the association may recover such costs if there are proceeds from the association’s foreclosure sale.

“Homeowner associations should be concerned

about recovering delinquent assessments in order to properly fund and maintain their communities,” Division Administrator Gail Anderson said.

“After evaluating each situation, a determination should be made concerning the best course of action. It may not be in the associations’ best interest to routinely turn over unpaid assessment accounts to a collection agency since the association may ultimately be responsible for the costs of collecting. The association should be using its option to enforce its superpriority lien status to receive payment from the lender.

“The timing of lien enforcement is another important factor that the association must take into consideration. The Division recommends the initiation of foreclosure of an assessment lien after no less than nine months, so as not to limit the superpriority lien amount the association can recover.”

In instances where the lender initiates a foreclosure, the association may also initiate the foreclosure process to preserve its lien status and seek payment of the superpriority lien from the lender. If the lender does not foreclose but agrees to modify the mortgage or to allow a short sale, the association has minimized its costs attempting to collect the debt and increased its probability of recovering the full amount of the delinquent assessments.

“We have seen many instances where collection fees, accrued by homeowners’ associations in an attempt to collect delinquent assessments, have derailed the short sale process by the placement of improper liens on a property that include costs of collecting,” Anderson said.

“In addition, the costs of collecting incurred by the association have also contributed to the failure of loan modifications because the homeowner is financially unable to reimburse the association those costs. Those added costs are just one more obstacle that a delinquent homeowner must overcome. The goal, of course, is to have a home occupied and regular assessment payments made on that property.”

Information regarding the opinion is the subject of Ombudsman classes currently in rotation. Such classes are available to board members and owners free of charge. To find an upcoming class, please visit [www.red.state.nv.us](http://www.red.state.nv.us) and click on “Classes and Presentations.”

The full Advisory Opinion 13-01 may also be found on the Division’s Web site under Advisory Opinions at <http://red.state.nv.us/CIC/opinions.htm>.

# Forms Forum

## Directors cannot do reserve study

Two registration forms were recently updated.

Form 562, Annual Association Registration, and Form 609, Reserve Study Summary, both were amended to reflect that directors may not perform reserve studies per NRS 116.31152.

All associations are required to cause a reserve study to be prepared at least once every five years by a reserve study specialist registered with the Real Estate Division.

The only exception is for associations that meet both of these conditions: fewer than 20 units AND located in a county with fewer than 55,000 people.

Program Officer III Sonya Meriweather said there is another special case for associations with no common elements for which they must reserve.

“If your association has absolutely no major components requiring reserves, an officer of the association must attest to that fact in a letter that accompanies the registration form,” she said.



### Ripple effect of kindness

Interesting thing about the ripple effect ... one drop can trigger a chain effect and spread in a meaningful way. Let us remember that “seemingly” small acts of kindness and tolerance can have impacts on your community in a significant way. Make the effort today.

- *Ombudsman Jenkins*

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