

COMMUNITY INSIGHTS

VOLUME VIII, ISSUE II

Department of Business and Industry, Real Estate Division

Fall 2011

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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Education outreach

Want a better understanding of how your association works? The Ombudsman's Office sponsors classes on a variety of topics all over Nevada, including all corners of the Las Vegas Valley. Subjects include:

- A summary of changes affecting NRS 116 from the 2011 Nevada Legislature;
- Fiscal matters;
- Reserve studies; and
- Maintenance, insurance and risk management

All HOA residents welcome and classes are free. Some topics are taught by independent contractors, while others by Ombudsman staff.

For an updated list of classes, visit: http://red.state.nv.us/cic/Calendars/omb_seminars.pdf or call the office at (702) 486-4480.

From the Ombudsman's Desk

Back to Basics ...

New Ombudsman to help HOA members understand, respect governing documents

I recently read a quote: "Life is 10% what happens to you and 90% how you respond."

I love that thought as I believe it sums up the power each one of us has when dealing with each other, especially as it relates to the inevitable highs and lows that come with living in a homeowners' association.

It is with great enthusiasm that I begin my journey as Ombudsman for common-interest communities. I look forward to working with all board members, homeowners, tenants, managers and others who may seek aid in a neutral forum to resolve disputes arising under the law and/or governing documents.

Since my appointment to this position on August 1, I have been a sponge; observing and listening to the issues raised by those of you who contact our office as HOA residents or professionals; while taking the time to educate and prepare myself for the Ombudsman's Informal Conference Program, first initiated by my predecessor, Lindsay Waite.

A huge push in the coming months will be to reinforce the power of association governing documents, including covenants, conditions and restrictions (CC&Rs) among disputing parties who agree to participate in the Informal Conference Program. Oftentimes, CC&Rs are an afterthought among as-



sociation members and only reviewed when there is a problem. Many problems can be avoided by knowing and understanding the rules from the outset.

At its core, effective association living begins with self-empowerment of the homeowner. At the very least, a homeowner should maintain a working knowledge of his or her CC&Rs. It is also essential to maintain an ongoing communication among the board of directors and each of the unit owners.

As this year comes to a close, I encourage all those Nevadans who live an HOA to take an active role in making their community the best it can be, despite negative press and a tough economic climate. Have faith in your CIC and in each other. If something is not working, fix it. If you need a neutral forum to discuss differences of opinion, please begin the process of filing an Intervention Affidavit with my office in order to schedule an Informal Conference.

In a recent radio interview with my friends at Nevada Public Radio, I was asked what was in my opinion a fantastic question. Dave Becker, who hosts the "State of Nevada" program on KNPR, asked: What advice I would give to homeowners to make their homeowners associations better? To that question I responded that such action begins with the homeowner.

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

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Commissioner's Corner

Lessons on the role of the state



By **MICHAEL BUCKLEY**
 COMMISSION CHAIRMAN

My last column! Although I feel more pressure to think of the right words with which to leave you, some are easy. Thank you to so many of you who have been a part of the Commission process over the past eight years: Division employees, Commission meeting attendees and speakers (whether or not I agreed with you!), legislators, advocates, Deputy Attorneys General and, most of all, my fellow commissioners, who have given of their time, expertise and support in this great experiment called the Commission.

One of my favorite quotes is from Winston Churchill: "It has been said that democracy is the worst form of government except for all those other forms that have been tried from time to time..." We have seen this time and again at meetings. Whether in the context of regulations, opinions, legislation or simply discussing the problems or trends confronting associations, the more people have participated in the Commission's work, the better the discussions and end product. I encourage all who are interested in association issues to participate in meetings and perhaps suggest ways the Commission may improve public input.

In its brief history, the Commission has spent much of its time discussing foreclosures. First was the concern that those who faced an association foreclosure have the opportunity to prevent it. This led to greater concern about foreclosure notices and Ombudsman involvement. More recently, the focus has changed to costs related to foreclosures, which occur by the thousands every month. It seems the debates involving foreclosure issues will persist. Unfortunately, most discussions overlook what may be even a greater problem.

All the discussions about collection fees this past Legislative Session have, it seems to me, ignored the elephant in the room: namely, the financial health of associations. Many struggle to maintain their communities and services in the face of fewer dues-paying owners. One can only wonder about the ability of associations to meet future needs, such as capital improvements or repairs.

In better times, Nevada helped put its associations on sound financial footing by requiring reasonable reserves. Perhaps those reserves have helped associations weather tough times. Still, there may be a price to pay if capital repairs become necessary and associations do not have the reserves to pay for them. If associations cannot

See **CORNER on Page 3**

Compliance supervisor contrasts investigation role

Compliance supervisor Sharon Jackson emphasizes a distinction between activities of the Compliance section and Ombudsman's Informal Conference Program: While they have related functions, they have very different processes.

"When a complaint goes to an informal conference, the focus is on trying to get everybody to agree on a resolution," Jackson said. "If a complaint comes to Compliance, we investigate whether or not there has been a violation of the law and take the necessary steps to correct the violation."



Sharon Jackson

HOA complaints start with Ombudsman

To file a complaint alleging a violation of NRS 116 or related laws against a homeowners' association, an aggrieved person must first send a certified letter to the party believed to be in violation. A good-faith effort at resolving the complaint, including a proposed solution, must be made. If the matter cannot be resolved, the person may then file an **Intervention Affidavit**, listing in detail any alleged violations, which must match those included in the letter, and providing evidence in support of the allegations.

The Affidavit goes first to the Ombudsman's Office, where every attempt is made at resolution.

If issues remain unresolved after a conference, Compliance may become involved.

Role of Compliance

Upon receiving the Affidavit from the Ombudsman, Compliance reviews the file for NRS 116 and NAC 116 compliance. If sufficient evidence exists to suggest a violation may have occurred, a case is opened and an investigator is assigned.

"At this point, instead of being one private party

against the other, the State becomes directly involved," Jackson said. "If the case ends up going to the Commission for Common-Interest Communities and Condominium Hotels, the Division will be the party alleging the violation."

An investigator's first duty is to inform all parties to the complaint that a case has been opened and to outline the nature of the complaint.

"If you are a subject of an investigation, you will know about it from the very beginning," she said.

The investigator may request documents, take statements from witnesses and issue subpoenas, among other activities.

She said Division personnel may not disclose any facts pertaining to a case, pursuant to NRS 116.757. Cases are confidential until they come before the Commission.

Possible actions

Once complete, the investigation is summarized and the investigator recommends a course of action to the Division administrator.

Some cases may yield insufficient evidence of a violation. In such a case, Compliance closes the case and informs the parties.

For relatively minor violations, the course of action may be a closure advisement letter. This is a formal statement indicating a violation occurred, but that no disciplinary action will be taken if the matter is adequately addressed within a specified time.

More serious issues may be recommended for a hearing before the Commission.

Compliance takes general questions

Investigators are available to take questions regarding NRS 116-related issues. Anyone with questions may call Compliance on weekdays from 8 a.m. to 5 p.m. The phone number in Southern Nevada is (702) 486-4480. In Northern Nevada, the number is (775) 684-6827.

Corner

Continued from Page 2

maintain common elements, the values of their homes will suffer, along with local tax bases. Perhaps, as housing prices stabilize and with it associations funding, deficiencies can be slowly rectified. If not, we may face a prolonged depressed housing market even as other factors turn around.

It's a mistake for us to think that a Commission regulation or opinion can cure all ills. It's also a mistake not to address serious issues that don't lend themselves to easy answers. It's fairly easy to take aim at particular association abuses or faults — bad boards will never go away. Foreclosures are distressing to everyone. Let's not forget, however, to tackle the bigger and possibly tougher issues. Healthy associations create better communities as

well as better cities and counties. One of the many good things that came out of this year's legislative whirlwind was a change in our language. When we speak about associations, we are speaking of the people who live in them and carry their financial burden. With people, of course, come those messy democracies.

I would like especially to thank Gail Anderson and her senior staff, Sonya Meriweather and Joanne Gierer, and our Commission Coordinator, Teralyn Thompson. Thank you, Teralyn, for all your patience and practical assistance over the years. Thank you, Nick Haley, for this soapbox. Finally, a special thank you to our counsel, Deonne Contine and Kateri Cavin — Kateri got us all off on the right foot.

Administrative Assistant Megan Roller is the person who reviews and enters the registration form provided by associations. She is also often the first contact for clients calling the Ombudsman's Office.



Meet 'Highlight Girl'

Megan Roller brings friendly spirit to often tedious registration filing requirements

In the five years she's served in the Ombudsman's Office, Megan Roller has made her mark. Again, and again, and again.

Megan has many roles, but her primary duty is to process registration forms, among others, submitted by homeowners' associations. All too often, lines are left blank. When they are, Megan can't proceed until all of the information is obtained.

"Unless the form states otherwise, all of the information is mandatory," Megan said. "Also, we can't complete the form for them. That means when there is a line left blank, we have to send it back."

Before returning an incomplete form, Megan helpfully points out the information needed on the registration using a highlighter marker. The colorful smudges across the forms have led many HOA contacts to calling her the "highlight girl."

"They say it nicely and they usually start communicating with me at that point, so I take it as a friendly nickname," she said.

Megan's jovial and down-to-earth nature suits her well in her role, which also includes answering phones and greeting visitors. Completing a registration form or visiting a government office are hardly memorable tasks, and yet visitors commonly remember Megan's colorful nature: either through the forms she returns with blue, pink and green highlights, her reddish hair, or a boisterous laugh that gives the office a more inviting, personal quality.

While assigned many routine tasks, Megan is all too willing to help out whenever the office needs a creative spark. In 2008, she was the first and most enthusiastic staff member to volunteer for the Ombudsman's informational videos, which may be found online at <http://red.state.nv.us/cic/cic.htm>. She has also participated in educational seminars covering the registration program.

More recently, she designed the new Ombudsman logo. The image of two hands shaking conveys the cooperative nature needed to make the office and the associations it regulates succeed, according to Ombudsman Kara Jenkins, who likens the logo to its creator.

"Megan is often the first person people meet when coming to our office and it's remarkable what a lasting impression she makes," Jenkins said. It definitely enhances our mission when visitors feel welcome."

Fellow employees say she's always genuine: her public persona is simply her.

Away from work, Megan and her husband, Jason, mostly spend time as a family, taking 4-year-old daughter Izzy and 18-month-old son Sebastian on nature hikes around Southern Nevada. She also enjoys manufacturing jewelry and is a self-described "Disney freak."

A new Ombudsman, a new look ...

Presented with the need to overhaul the office's publications, new Ombudsman Kara Jenkins decided it would be a good time for a new

image as well. Noting the lack of an office logo, she asked staff to come up with an image that represented the office's mission and made its products readily recognizable.

Accepting the challenge was administrative assistant Megan Roller. Her image of shaking

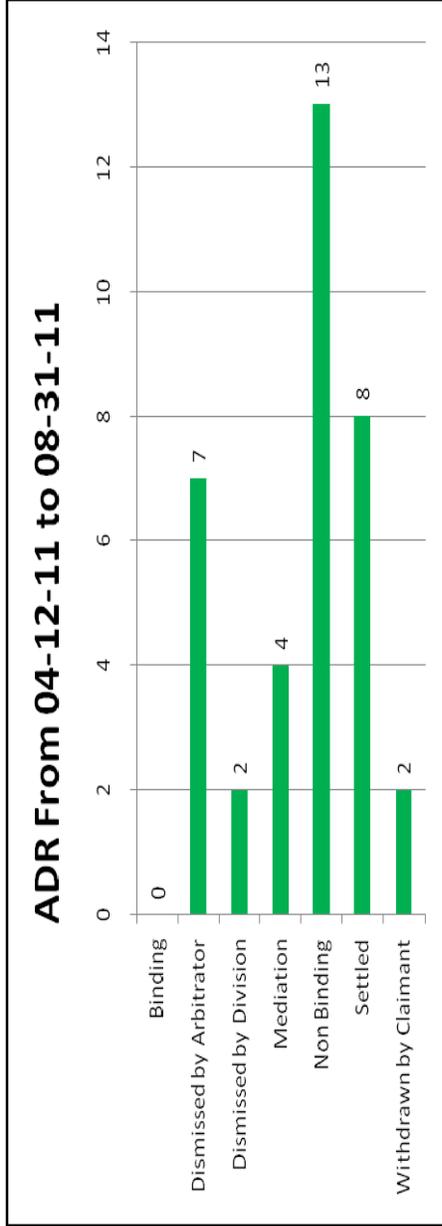


hands, a row of homes and the office's name will adorn brochures and other products of the office beginning late this year.

The logo is the first of its kind for the Ombudsman's Office in its 13-year history.

"The Ombudsman is always looking for ways to improve its products and services and the way we deliver them," Jenkins said. "Updating the look of our products is one way we communicate that we are doing things in new ways."

Alternative Dispute Resolution Claims From April 12, 2011 to August 31, 2011



NOTE: For a summary of Alternative Dispute Resolution decisions, visit www.red.state.nv.us, go to the Common-Interest Communities and Condominium Hotels page, search by year and click on the case number of a decision.

CLAIM	DATE OPENED	DATE CLOSED	FILED BY	NATURE OF CLAIM	DISPOSITION
10-84	05-03-10	04-22-11	Homeowner	Revoking of Approved Plans	Settlement
11-18	09-03-10	04-28-11	Homeowner	Homeowner claims Association assessed fines for construction penalties that are not the fault of homeowner.	Dismissed by Arbitrator
11-34	11-05-10	05-06-11	Homeowner	Delinquent Assessments	Settlement
10-105	06-17-10	05-10-11	Homeowner	Fines	Arbitration found in favor of Homeowner. Association may not impose fines against owner.
11-57	03-02-11	05-11-11	Association	Parking Issues	Dismissed by Arbitrator
11-78	04-19-11	05-11-11	Homeowner	Collection of Fees Improperly	Withdrawn by Claimant
11-41	01-04-11	05-12-11	Homeowner	Collection of Fees Improperly	Settlement
11-62	03-16-11	05-13-11	Association	Delinquent Assessments	Dismissed by Division due to lack of service.
11-30	10-26-10	05-25-11	Association	Unauthorized Improvements	Arbitration found in favor of Association, Homeowner to pay Association \$10,000; \$1,000 in fines and \$9,000 in attorney fees
11-54	02-22-11	06-07-11	Homeowner	Collection of Fees Improperly	Settlement
08-105	04-29-08	06-08-11	Association	Parking	Dismissed by Arbitrator
11-17	09-01-10	06-08-11	Homeowner	Delinquent Assessments	Settlement
10-24	10-05-09	06-09-11	Declarant	Property Damage	Dismissed by Arbitrator

Alternative Dispute Resolution Claims Closed From April 12, 2011 to August 31, 2011

CLAIM	DATE OPENED	DATE CLOSED	FILED BY	NATURE OF CLAIM	DISPOSITION
10-95	06-02-10	06-13-11	Association	Rental of Unit	Dismissed by Arbitrator
11-46	01-06-11	06-14-11	Homeowner	Fines	Settlement
11-58	03-03-11	06-15-11	Homeowner	Home Placed Into Foreclosure Improperly	Settlement
11-42	01-05-11	06-16-11	Homeowner	Collection of Fees Improperly	Dismissed by Arbitrator
10-76	04-12-10	07-14-11	Association	Maintain Landscape/Property	Arbitration found for Association. Association awarded \$8,310.57 in attorney fees. Arbitration fees are divided equally between the parties.
11-20	09-16-10	07-14-11	Homeowner	Failure to Perform Fiduciary Duties	Arbitration found for Association. Claims #11-20, #11-32, #11-39, #11-48 are all associated.
11-32	11-02-10	07-14-11	Homeowner	Improperly Held Meeting	Arbitration found for Association.
11-39	12-07-10	07-14-11	Homeowner	Failure to Perform Fiduciary Duties	Arbitration found for Association.
11-48	01-25-11	07-14-11	Homeowner	Failure to Perform Fiduciary Duties	Arbitration found for Association.
11-89	05-25-11	07-21-11	Homeowner	Collection of Fees Improperly	Withdrawn by Claimant
11-65	04-01-11	07-25-11	Homeowner	Property Damage	Mediation
11-52	02-03-11	07-25-11	Homeowner	Revoking of Approved Plans	Mediation
11-29	10-25-10	08-08-11	Association	Delinquent Assessments	Arbitration found for Association. Association awarded \$71,535.20: \$45,084.50 in assessments, \$6,543.16 in costs, and \$19,907.50 in attorney fees. Arbitration fees paid equally by parties.
11-40	12-29-10	08-08-11	Homeowner	Collection of Fees Improperly	Mediation
11-51	02-03-11	08-12-11	Homeowner	Home Placed Into Foreclosure Improperly	Settlement
11-02	07-08-10	08-15-11	Homeowner	Maintain Landscape/Property	Mediation
11-88	05-24-11	08-15-11	Other	Construction Penalties	Dismissed by Division
11-59	03-08-11	08-17-11	Association	Delinquent Assessments	Arbitration found for Association. Association awarded \$12,666.88: \$6,839.91 in assessments, \$3,341 in attorney fees and \$2,485.97 in arbitration costs.
11-67	04-01-11	08-17-11	Association	Delinquent Assessments	Arbitration found for Association. Association awarded \$6,553.89: \$3,879.06 in assessments, \$1,654 in attorney fees and \$1,020.83 in arbitration costs.
11-71	04-01-11	08-17-11	Association	Delinquent Assessments	Arbitration found for Association. Association is awarded \$11,894.97: \$9,144.44 in assessments, \$1,729.97 in attorney fees. \$1,020.83 in arbitration costs.
11-49	01-26-11	08-31-11	Homeowner	Maintain Landscape/Property	Arbitration found for Homeowner. Association to reimburse Homeowner \$996.96: \$246.95 in fees and \$750 in arbitration fees.
11-70	04-01-11	08-31-11	Association	Delinquent Assessments	Arbitration found for Association. Association awarded \$4,464.87: \$2,192.50 in assessments, fees and interest. \$1,602.24 in attorney fees and \$602.13 in arbitration costs.
11-93	06-13-11	08-31-11	Homeowner	Architectural Requirements	Dismissed by Arbitrator

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

Penny Wood Frederick Case No. CIS 08-16-088, CIS 11-09-01-040, CIS 11-12-08-133, CIS 11-07-10-010, CIS 11-07-11-011, CIS 11-07-18-018 & CIS 11-10-34-114 July 2011 Unlicensed Community Manager

Factual Summary

At all times relevant to the cases, respondent Penny Wood Frederick did not have an active community manager's certificate pursuant to NRS 116A.400. Subsequently, the respondent held herself out as and performed as a Nevada community manager certified pursuant to NRS 116 and NRS 116A. During this time, Wood was the owner of PW James Management and Consulting. As late as April 1, 2009, the company's Web site listed her as a "CAM and CMCA to provide CAM duties to associations."

PW James was hired on or about May 21, 2007 to perform community management duties for Stallion Mountain HOA, which association communications support. Wood held herself out as and performed as a community manager, signing at least 79 checks.

Wood similarly signed checks on behalf of Paradise Falls HOA, another association to which she represented herself as a community manager.

On behalf of another association, Tuscan Village Northshores HOA, the respondent sent several letters to owners, including lien notices, identifying herself as a community manager.

On behalf of Allure 1 Townhomes, the respondent coordinated the financial management and elections of the association. She also managed board contracts, including the cancellation of a contract with Bailey's Sweeper Service. She failed to turn over records and documents during an inter-board dispute regarding the status of her contract. On Aug. 6, 2010, the Real Estate Division served Wood with a cease-and-desist order due to performing community management duties without the re-

quired certificate. Following the order, she failed to abide by it by sending statements, HOA-related letters and election notices to unit owners, and by signing checks on behalf of the board. On or about November 2, the board informed her in writing that she was no longer the community manager and demanded that she transfer association records to the new management company. She failed to do so and signed two additional checks after that date.

The respondent similarly held herself out as, and performed the duties of, a Nevada community manager for Villagio Community HOA, Pecos Estates HOA, Pecos Creek HOA, Palmilla HOA and Springfield Property HOA.

For holding herself out as, and performing the duties of, a community manager without possessing the required certificate with each association involved, the respondent violated NRS 116A.400(1). Further, the respondent additionally violated NRS 116A.400(1) by signing checks for Stallion Mountain HOA, Paradise Falls HOA and Allure 1 Townhomes. She also failed to abide by the Division's cease-and-desist order by managing the financial statements, bank accounts, elections and third-party contracts of Allure 1 Townhomes. She also sent correspondence to unit owners of Tuscan Village Northshores HOA as the community manager following the cease-and-desist order.

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.

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.

Stipulated Settlement

1. Ms Wood-Frederick admits and stipulates to the factual allegations and violations of law listed in the stipulated settlement dated July 12, 2011;
2. The respondent agrees to pay the Division an administrative fine of \$15,000; and
3. Ms Wood-Frederick agrees to make clear in

any contract entered into by PW James Management to perform community management services that she is not a certified community manager and that a certified community manager will perform all services that require one.

4. The Division agrees not to pursue any further or greater remedies in connection with the conduct referenced within the associated case numbers against the respondent.

Forms Forum

Registration forms updated

Associations take heed: Registration forms have been updated to reflect changes to the law and are now posted online.

As of Oct. 1, 2011, Annual Association Registration (Form 562), Registration Filing Addendum (Form 623), Reserve Study Summary (Form 609) and Declaration of Certification (Form 602) have been amended. Associations are required to use the latest version of a form when submitting a registration filing.

None of the forms changed substantially, but there are a few noteworthy changes:

- A question on Form 562 asks for an explanation if an audit or review has not been completed;
- Form 562 and Form 609 both indicate that a valid reserve study requires a full on-site inspection;
- Self-managed associations that perform their own reserve study and for small associations (<20) in rural counties (<50,000 pop.) must identify who performed the study

Associations may obtain the latest form by visiting www.red.state.nv.us and clicking on Forms.

Ships or bridges?



This picture demonstrates a fundamental point: There is more than one way to see things. When working with each other, whether you are a board member, homeowner or tenant, it is important to understand that perceptions can and will be different. When working to tackle common issues within your HOA, be conscious that your view, while reasonable, may be viewed differently by others.

- Ombudsman Jenkins

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