VOLUME X, ISSUE I

Department of Business and Industry, Real Estate Division

Spring 2014

## 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.

### Inside this issue

Did You Know?	2
Spotlight on Jennifer Oerding	2
2013 Legislative Update/	3
Disciplinary Actions	5
Ombudsman's Q & A.	6
Referee program is Back!	7
Online Renewal Available	8
Video Series	88

### Education outreach

The Ombudsman's Office hosts training sessions for Nevada association residents who want to know more about their rights and responsibilities.

To find an upcoming class visit http://red.state.nv.us/cic.htm and look for "Upcoming Classes." All HOA residents welcome. Call Ken Richardson at (702) 486-4480 for registration and information. Can't make a class? The slide

presentations are posted online,

along with lots of other resources.

# New Ombudsman...New Vision

Coming together is a beginning; Keeping together is a process; Working together is success.... Henry Ford

evada Real Estate Administrator Gail Anderson announced the appointment of Sharon Jackson as Ombudsman for the Common-Interest Communities and Condominium Hotels program.

As Ombudsman, Ms. Jackson will assist homeowners and board members in common interest communities, commonly known as homeowner's associations, to better understand their rights and obligations under the law and their governing documents. The Ombudsman meets with parties to attempt to resolve and mediate disputes filed with the office mainly through utilizing the newly improved Ombudsman's informal conference program.

Ms. Jackson has more than 20 years of experience in the fields of mediation, administration, human resource management, consumer outreach and education acquired while serving the State of Nevada. She most recently was the Supervisory Investigator for the Common-Interest Community Program with the Real Estate Division.

Subsequent to this she served as the Deputy Director of Administration for



the Department of Business and Industry. Previously she held a number of key positions with the Consumer Affairs Division within the Department of Busi-

ness and Industry including interim Commissioner, acting Chief Investigator, and Deputy Chief Investigator.

"I believe my experience in protecting and educating the public is a valuable trait that I bring to my new position. I am excited and looking forward to bringing my training and experience in the mediation process to our constituents by providing a neutral forum through the informal conferencing process. During my tenure with the Department of Business and Industry I found these quality skills to be an asset and I will continue to rely on these principals for my vision of this program" said Jackson. "I appreciate the opportunity to continue working with the stakeholders within the Common Interest Community Program and hope that together we can continue to create a better Nevada."

## COMMUNITY INSIGHTS

VOLUME X, ISSUE I is an official publication of the

## STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

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

**Barry Breslow, Vice Chairman** Attorney Member

Scott Sibley, Commissioner Homeowner Member

Jonathan Friedrich, Commissioner Homeowner Member

Robert Frank, Commissioner Homeowner Member

James Rizzi, Commissioner Developer Member

# DID YOU KNOW?

All associations are required to file, in person or by mail, an Annual Registration Form (Form 562) every year with the Ombudsman's Office. Plus submit the unit fees required by NRS 116.31155(3)(c). If the fee isn't paid by the last state recognized business day of the month in which it is due, the Division imposes a statutorily defined penalty equal to 10% of the amount owed, or up to \$500, whichever is less. If the filing is one month or more past due, the Division imposes a statutorily defined monthly interest at a rate equal to the prime rate at Nevada's largest banks, plus 2%. The current rate is 3.25%, therefore, the maximum rate that can be imposed is 5.25%, per annum. The prime rate is determined by the Financial Institutions Division.

To calculate the fee due with the filing, multiply the number of units in the association times \$3. For example, if your association includes 250 units, your fee is (250 X 3) \$750. If the \$750 fee is late, the late fee is \$75 (750 X 10%). Again, the last business day of the month is the last day of the month that state offices are open. For example, suppose your annual registration is due each year in the month of November. This year, Thanksgiving falls on 11/27, a Thursday. All state offices are closed on Thanksgiving day. The next day, Friday, November 28, is also state holiday. Therefore, the last business day of the month is Wednesday, November 26. If your filing is not received in the Las Vegas office by the close of business (5:00 p.m.) on November 26, it is late and a late fee will be assessed.



## From Out in the Field to **Behind the Desk**

Ombudsman Jackson is pleased to introduce Jennifer Oerding as the new Education and Information Officer for the Common-Interest Communities and Condominium Hotels Program. Jennifer is a great

addition to our program.

A long-term resident of Las Vegas, she comes with a tenured real estate background she was a full-time agent, holding both a broker- salesman license and property manager permit for over 24 years, both are now inactive to comply with Division policy. She also served a four-year term on the Executive Board of her homeowner's association. She holds a Bachelor of Science in Business Administration with a concentration in management.

The Division felt Jennifer's real estate experience and personality would be the perfect fit within the Common-Interest Community and Condominium Hotels Program to help facilitate and continue to create good will with all licensees, permit and certificate holders. There is no question that her strong qualities are an asset to the program. We are pleased to be sharing this announcement.

# 2013 Ombudsman Legislative Summary

### **PREFACE**

This digest highlights select changes to the Nevada Revised Statutes from the 2013 Legislative Session that affect homeowner associations. This summary does not purport to be a complete listing of all HOA-related changes, but highlights the most prominent changes affecting common-interest communities.

The bills summarized within are as follows:

SB 130	AB 44
SB 278	$AB\ 273$
$SB\ 280$	AB 370 (amends NRS 38)
	AB 395

To see all of the bills directly relating to HOA's in their entirety, visit the Nevada Legislature Web site's 2013 Bill Information: http://www.leg.state.nv.us/Session/77th2013/Reports.

### RESALE PACKAGES

SB 280 amends a provision requiring associations to state the amount of unpaid obligations associated with a unit within a resale package. The certificate, as part of the resale package set forth in NRS 116.4109, still includes a statement of all unpaid obligations due from the selling unit owner, but this statement cannot be relied upon by the seller or buyer. SB 280 added a new section to NRS 116.4109 that allows an owner, an agent of an owner, or the holder of a security interest on the home (e.g., a lender) to request a "statement of demand" from the association, which must be furnished not later than 10 days from receipt. The statement of demand must set forth the amount of monthly assessments and any unpaid obligation of any kind currently due from the unit owner. The statement of demand remains effective for 15 business days from delivery. The association must honor the amount set forth in the statement of demand as payment in full, and must deliver a replacement statement if it discovers an error. The association may charge as much as \$150 to prepare and furnish the statement of demand, and an additional \$100 if the statement is provided within 3 days upon request. This fee is in addition to the fee for the resale package certificate.

For the certificate provided with the resale package, the association may charge up to \$160, and \$125 to expedite within 3 business days. (NAC 116.465) A seller will need both the resale package (costing up to \$160 without expedite fees) and statement of demand (costing up to \$150 without expedite fees). SB 280 also allows associations to charge as much as \$20 for providing a resale package electronically. Previously no charge was permitted for providing the resale package documents electronically. (NRS 116.4109) (Effective October 1, 2013)

### VIOLATIONS / ENFORCEMENT OF CC&RS

AB 44 limits the means by which associations can regulate the storage of a home's recycling or trash containers with curbside service. The association's rules cannot require that the containers be stored within any building or garage. Associations may limit their storage to the side or rear of a unit, if such exists, and may require storage containers be screened from view from the street, a sidewalk or any adjacent property by an approved screening structure. Associations may also reasonably regulate the location and time during which such containers may be set out for pick-up. This new section will apply to planned communities containing more than 6 units. (NRS 116 .332) (October 1, 2013)

SB 130 modifies what an association must do before a fine for a violation of the governing documents may be imposed. Current law requires the association to provide written notice of the alleged violation to the unit owner (or other person accused), the amount of the fine, and the date, time and location for a hearing on the violation and a reasonable opportunity to contest the violation at a hearing. SB 130 supplements the current law. SB 130 requires that the notice also include a detailed description of the alleged violation and the proposed action to cure it. SB 130 also requires that the association provide a clear and detailed photo of the alleged violation, if the alleged violation:

- Relates to the physical condition of the unit or the grounds of the unit; or
- Is an act or failure to act of which it is possible to obtain a photograph.

The person against whom the fine will be imposed must be given a reasonable opportunity to cure the alleged violation. Continuing violations do not require additional hearings or photo evidence. (NRS 116.31031) (Effective January 1, 2014)

SB 280 enables a first security interest holder (typically the first deed of trust) on a home within an association to establish an impound account for the payment of assessments with the consent of the unit owner. (NRS 116.3116) (Effective October 1, 2013)

SB 280 also requires that an association send certain information to a unit owner who is delinquent on assessments before sending a notice of delinquent assessment or taking any action to collect on the debt. Not less than 60 days after the obligation becomes past due, the association must send a schedule of fees that may be charged, if the unit's owner fails to pay the past due obligation a proposed repayment plan, and notice of the right to contest the past due obligation at a hearing before the board and the procedures for requesting such a hearing. (NRS 116.31162) (Effective October 1, 2013)

Legislative Summary Cont.

### ALTERNATIVE DISPUTE RESOLUTION

AB 370 amends NRS 38 as it applies to disputes concerning common interest communities. It replaces arbitration with mandatory mediation or the State's referee program which is administered by the Division. Either program fulfills the statutory requirement needed prior to engaging in a civil action.

The referee "Program" (described in AB 370) is a new dispute resolution program in which parties to a dispute involving governing documents or the process of changing assessments may agree to a hearing before a referee. The referee issues to the parties a decision and award, which may not include attorney's costs or fees. The maximum total fee that may be charged by the referee is \$1000 (\$500 per party), and the Division offers a subsidy of \$250 to qualifying parties. Subsequent to a decision, either party has 60 days to file in civil court. If no action is taken in 60 days, the parties have one year to seek confirmation of the decision and award in court. Participation in the Program must be agreed to by the parties. Completion of the Referee Program fulfills the statutory requirement needed to proceed with a civil action. For in -depth information, go to our website located at www.red.state.nv.us and under the Forms heading, please see form #523.

If the parties do not agree to participate in the Referee Program, the matter will be referred to mediation. The mediation must not exceed three hours in length and \$500 (\$250 per party), unless both parties agree to additional time, which may cost no more than \$200 per hour. Should mediation fail to produce an agreement, either party may file a civil action with the appropriate court, or, if the parties agree, the matter may be arbitrated. If the parties agree to arbitrate the dispute, the cost of arbitration must not exceed \$300 per hour. NRS 38 new section and revision to NRS 38.300 - .360) (Effective October 1, 2013)

### **FORECLOSURES**

AB 273 amends NRS 116.31162 to restrict an association from foreclosing its lien if:

- The unit is owner-occupied;
- There is a notice of default and election to sell filed by a lender encumbering the unit; and
- A certificate stating mediation, required by NRS 107.086 was completed is not recorded against the unit.

NRS 107.086 was also amended to state that during the pendency of any mediation, a unit's owner must continue to pay any obligation, other than any past due

obligation. The unit's owner would need to pay the regular assessment as it is due, but would not have to pay any charges that are past due. It is not clear that a violation of NRS 107.086 would mean the association could pursue foreclosure of its lien in spite of NRS 116.31162 (as revised). The provisions of NRS 116.31162 (as revised) are independent of the owner's compliance with NRS 107.086 (as revised). (NRS 16.31162; NRS 170.086) (Effective October 1, 2013)

SB 278 creates a potentially faster procedure for lenders to foreclose upon abandoned residential property that fit certain criteria. The process requires an affidavit, including photographs, showing how the lender or lender's agent determined the home to be abandoned. In addition, local governments may create a registry of abandoned residential properties. Associations may want to assist lenders in identifying abandoned property within the community to expedite the foreclosure process. (NRS 107 – Several sections) (Effective July 1, 2013)

### CONDUCT IN COMMUNITY

AB 395 prohibits engaging in conduct that causes harm or serious emotional distress or the reasonable apprehension thereof or that creates a hostile environment for that person. This provision applies to community managers (their employees and agents), board members, officers, employees and agents of the association, unit owners, and guests and tenants of unit owners. Violation of the new statute is a misdemeanor. Violating this new statute is not considered a "violation" under NRS 116.745, which excludes it from the jurisdiction of the Common-Interest Community Commission. (NRS 116.31184) (Effective October 1, 2013)

### **CONTACT US**

The Real Estate Division is available for questions related to compliance with NRS 116 and NAC 116. To speak with a representative, call (702) 486-4480 Monday through Friday between 8 a.m. to 5 p.m. You may also attend the weekly Q & A forum in Las Vegas and quarterly in northern Nevada.

Statewide toll free: 877-829-9907
Telephone: Las Vegas -702-486-4480
Carson City -775-687-4280 Ext. 311
Facsimile: 702-486-4520
www.red.state.nv.us
CICOmbudsman@red.state.nv.us

## **Disciplinary Actions/ Stipulations**

By the Commission for Common-Interest Communities and Condominium Hotels

# Judith Fenner Case No. CIS 13-09-12-068 December 2013 Community Manager

This matter came before the Commission for Common-Interest Communities and Condominium Hotels (Commission), December 3, 2013. Judith Fenner appeared and was represented by counsel, but presented no defense.

<u>Findings of Fact</u>: Commission finds that there is substantial evidence to establish the following factual allegations:

- Association bank records showed Respondent as the only signor on Association checks.
- Two board members whose signatures on checks were received into evidence stated by way of affidavit that the signatures on association checks were not theirs.
- One affidavit stated that the Respondent appointed to the board a friend who did not own property within the association. The friend's signature was found on association checks.
- Respondent exercised complete control over the association's physical administrative and financial maintenance and management.
- Respondent failed to respond to the request for a response to the allegations.

<u>Conclusions of Law</u>: Respondent violated:

- •NRS 116A.630(1)(a) by failing to act as a fiduciary, NRS 116A.630(1)(b) by failing to exercise ordinary and reasonable care in the performance of her duties, NAC 116A.355 (1)(a)(1) by engaging in deceitful, fraudulent, or dishonest conduct, and NAC 116A.355 (1)(a)(2) by committing professional incompetence:
- Up to 39 times by signing association checks in the names of different board members;
- 70 times by being the sole signor on association checks;
- By appointing to the association board a friend who was not a property owner within the association and for allowing the friend to sign checks.

**Order**: Respondent(s):

- Community Manager Certificate is revoked.
- Shall pay a fine of \$77,446.50
- Shall not serve as a board member on an Common Interest Community in the state of Nevada for 10 years.
- Division may institute debt collection proceedings and Respondent shall pay the costs associated with collection.

Sierra Gardens Homeowners
Association and
David Hough, Roy Roundy, Stephen Willner,
Brenda Heller, Ardella Brautigam, and
Ronald Deck
Case No. IN-12-1580/CIN 12-05-29-216
September 2013
Board of Directors

Settlement Agreement, Approved Summary of fac-

tual allegations: Respondent Sierra Gardens Homeowners Association (Association) is a self-managed association and all additional Respondents were members of the board of directors of the association at the time of the facts alleged. The association authorized payments, generally in the amount of assessments, to officers and

> directors. Respondents stipulate to acting knowingly and willfully in their actions to authorize and accept payments and/or compensation from the Association.

# **Actions/Decisions**

Actions of the Commission for Common-Interest Communities and Condominium Hotels 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

### Summary of violations of

law: Respondents violated: NRS 116.31187; for accepting compensation while serving on the board or the board of directors and by an officer accepting compensation.

NRS 116.3103 by failing to

act in the best interest of the Association when accepting compensation from the Association while on the board or as officers.

NRS 116.3103 (through NAC 116.405(6)) for failing to keep informed of laws, regulations, and developments relating to Association business.

VOLUME X, ISSUE I COMMUNITY INSIGHTS PAGE 6

## **Disciplinary Actions/ Stipulations**

Continued from page 5

NRS 116.3103 (through NAC 116.405(3)) by:

- Failing to have a professional reserve study performed and properly fund the reserve account,
- Failing to have financial statements reviewed by a CPA,
- Appointing an employee bookkeeper of the Association as an officer of the Association by filling a vacancy without a meeting and formal action, and
- Allowing the employed bookkeeper/officer to sign Association checks.

NRS 116.3103 (through NAC 116.405(8)(e)) by:

- Failing to consult with appropriate professionals prior to making major decisions affecting the Association,
- Filling a board vacancy without a meeting or formal action,
- Appointing an Association employee as an officer of the Association with specific authority to sign checks on behalf of the Association.

NRS 116.3103 (through NAC 116.405(8)(g)) for failure to maintain current, accurate, and properly documented financial records.

NRS 116.3103 (through NAC 116.405(8)(i)) for failing to establish policies and procedures which lead to reliability in financial reporting.

<u>Terms of Settlement</u>: The Commission accepted the proposed settlement including the following terms:

- The Association agrees not authorize any compensation payments to its board or officers;
- Respondents make payments to the Association representing the amount of unpaid assessments due;
- The Association places all funds received as a result of this Stipulation into the Association's reserve account;
- The Association hires and maintains a professional manager;
- Respondents take no less than 6 hours of classes offered by the Division for every year they served on the board;
- If Respondents serve on any common-interest community board in the next 3 years, they disclose they are not in good standing until all amounts due are paid to the Association; and
- All current board members take no less than 6 hours of Division sponsored education.

TO READ THESE OR OTHER CASES AND ORDERS PLEASE GO TO: WWW.RED.STATE.NV.US, click CICCH/HOA, CICCH COMMISSION INFO, then COMMISSION ORDERS.

## Ombudsman's Q & A Forum

This forum, hosted by the Ombudsman, Jennifer Oerding, Education and Information Officer and Ken Richardson, Program Training Officer, is free and open to all. It's a great way for owners and board members to have their questions answered and to learn more about the laws. The forum is held on Friday's at 9:00 a.m. in Las Vegas at 2501 E. Sahara, Suite 200. The forum is scheduled quarterly in northern Nevada with times and locations posted in advance on our website. Also note to be receive our email blast of select questions and answers from the forums, please email ombclasses@red.state.nv.us. Check our website as meeting days are subject to change.

## Q. Can two trustees living in the same unit serve on a board at the same time?

- A. Yes. NRS 116.31034(10) defines unit ownership, including the trustees of a trust. Nothing in the statute prohibits more than one individual from the same unit from serving simultaneously on the board. Of course it should be disclosed in the candidate's disclosure statement.
- Q. Do owners have a right to documents and opinions issued by the HOA's attorney?
- A. Not necessarily. The attorney's work product is, by definition, privileged. The board can decide not to release work product from the attorney to the owners; however, they should explain why documents are not being released. For example, if the information relates to pending or threatened litigation. The privilege applies to any legal advice given by the attorney to the board.
- Q. Can tenants attend board meetings?
- A. Yes, provided there are no restrictions in the governing documents. Tenants are subject to the restrictions that govern the community; therefore, it seems more than reasonable to allow them to attend open board meetings. Of course, tenants are not eligible to serve as members of the executive board.
- Q. Our board recently proposed a change in the declaration. A ballot was sent to all homeowners, however, the response was disappointing. Can the board keep the voting open until they get an answer?
- **A.** Yes. Under NRS 116.311(9), the board can continue to solicit ballots until they have an answer -yes or no as long as they comply with statute.

VOLUME X, ISSUE I COMMUNITY INSIGHTS PAGE 7

### Forum .

Continued from page 6

# Q. Can a homeowner be an employee of the association?

A. Yes. While a board member cannot provide goods and services to the association, a homeowner is not subject to the sane restrictions. Of course, the board should ensure the homeowner is credentialed and that the selection process is free of favoritism. The selection of any vendor must be in the best interest of the association and potential or actual conflicts of interest must be disclosed. (NRS116.3103). If a board member is related to the homeowner, NRS 116.31187, (above), may apply.

# Q. If a board member is sued is the association obligated to pay the costs?

**A.** NRS 116.31037 requires the association to indemnify board members unless it is proven that the member acted with wanton misfeasance (a lawful act performed in a wrongful manner) or gross negligence.

# Q. Can the association charge for reviewing records

**A.** Yes. Under NRS 116.31175(8), the board can charge owners up to \$10.00 per hour to view the associations records.

# Q. Is the board required to notify owners if the association gets sued?

A. There is no specific requirement in NRS 116, however a law suit is a significant action that could have a major impact on the association. The association's board has a fiduciary duty under NRS 116.3103 to keep the owners informed of potential liabilities the association may incur and of unbudgeted expenses that would have an obligation to inform owners any

time it is sued. This could be done by having the matter placed on the board's agenda.

In addition, a lawsuit against the association would be documented in various association records. For example, NRS 116.31085(3) authorizes the board to meet in executive session to discuss pending litigation. The agenda for that meeting would, therefore, include a discussion or action item regarding that litigation. In addition, the minutes from that meeting would include a general description of action taken by the board. If there is a settlement, NRS 116.31088(4) requires the board to disclose the terms of the settlement of a civil action at the next regular scheduled meeting and NRS 116.4109(1)(d) requires sellers to disclose any unsatisfied judgments or pending legal action, if the seller has actual knowledge of the matter.

## Q. What defines the limits of the community managers authority.

A. The management contract and state law define the manager's scope and authority. NAC 116.620 describes the minimum contents of the management agreement. The authority delegated by the board to the manager varies from one association to another, depending on the needs of the community. Certain tasks, however, cannot be delegated. For example, a community manager cannot sign checks drawn on the reserve account. Although the executive board supervises the manager, the CAM is responsible for their own behavior and compliance with the law.

## **The New & Improved Referee Program**

Assembly Bill 370 which went into effect on October 1, 2013, authorized the Real Estate Division to offer the Referee program which is available for aggrieved parties to use as a method of alternative dispute resolution. The Referee program was established for parties who are seeking a decision on a dispute regarding governing documents.

The goal of the Referee program is to provide aggrieved parties with an expedient and less costly means of resolving their issue in front of a referee. The filing fee for an ADR claim is \$50.00, and referees may charge no more than \$200 per hour, not to exceed a total of \$1,000, or \$500 per party per referee proceeding. A partial subsidy of up to \$250.00 is available for parties who qualify. For more information go to **www.state.red.nv.us**, and reference form #668.

How does the Referee program work? The Referee program must be agreed to by BOTH parties – otherwise, your claim will default to a mediation claim. A Referee claim starts with a \$50.00 filing fee and a completed claim form, #520. The claimant has 30 days from the date of service to file a response with the Real Estate Division. After the response is received, the referee is assigned. The referee receives supporting documents from both parties, reviews them, and schedules a hearing in which both parties are allowed to present their side of the dispute. Parties do not need to appear; the referee can rule on the filed papers. After the referee hearing has concluded, a non-binding decision is rendered within 30 days. After receipt of this decision, the parties may then proceed to civil court for confirmation of referee's decision. If the parties disagree regarding the decision they may continue with ADR via arbitration or proceed to civil court. This process does fulfill the statutory requirement needed prior to proceeding to Civil Court.

VOLUME IX, ISSUE I COMMUNITY INSIGHTS PAGE 8

## **Attention CAMs**

### Online Renewal Available\*

To renew your certificate online, visit **www.red.state.nv.us**. On the right side of the page under Quick Links, select Online Renewals and follow the instructions. Applicants must use Internet Explorer, have a credit card ready and be no more than 45 days before your certificate expiration date.

Applicants must list the continuing education courses they attended, including CE number and date. You may also scan and attach your certificates to document completed education for the renewal.

\*Managers wishing to "upgrade" their certificates, such as change from provisional to regular community manager, must submit an application to the Division. Online renewal is not available at this time for supervising community managers.

## **Watch and Learn**

We are pleased to announce that five professional video tutorials are available for viewing.

The five videos include a four part series on the reserve study and one dedicated to the election process.

The reserve study series includes; what is a reserve study, the reserve study specialist, the physical analysis, and the financial analysis. The election video is a helpful guide to assist in properly conducting executive board elections by highlighting guidelines that must be followed pursuant to Nevada law.

To access these videos, please go to **www.red.state.nv.us**, click on CICCH/HOA, click publications, then click video tutorials for the list of video selections.

We hope you will use these tools to educate your boards and homeowners.

If you would prefer to receive the Community Insights in an electronic format, please register at Commityinsights@listserv.state.nv.us. Under "options" click "subscribe," on the left side of the subscription page select "Community Insights," you will be prompted to enter your email address and create a password. You will then receive an email which will contain a confirmation link, click this link to confirm and complete your e-community insights subscription.

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