

# COMMUNITY INSIGHTS

VOLUME VII, ISSUE II

Department of Business and Industry, Real Estate Division

Winter 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.

**Inside this issue ...**

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**Education outreach**

**Laughlin**

1/13, 11 a.m. – 2 p.m.  
Regional Government Center

**Henderson**

1/15, 10 a.m. – 1 p.m.  
Heritage Senior Services Center

**Las Vegas**

1/20, 9:30 a.m. – 4:30 p.m.  
Bradley Building, 2501 E. Sahara Ave.

All HOA residents welcome. Call Nicholas Haley at (702) 486-4480 for registration and information on topics covered at each session.

**From the Ombudsman's Desk**

## Final thoughts on maintaining peace in HOAs



By LINDSAY WAITE  
OMBUDSMAN

I am retiring from the Office of the Ombudsman and pursuing photography and related interests in the private sector. So in this, my final column, I reflect on the past and the future of this Office.

The Ombudsman Informal Conference Program, which we initiated when I came on Board in July 2006, has resulted in close to 200 resolutions from approximately 350 conferences during this time frame. These conferences, in turn, have stemmed from close to 1,300 Intervention Affidavits filed by people who have opposing points of view.

Board members, homeowners, tenants, managers and others who participate in this program gain insight into opposing points of view. When disputes are resolved, the participants have diminished hostilities. We encourage people to use this process whenever there are concerns arising in their communities relating to its governing documents or NRS 116 (and related laws).

Even before filing the Intervention Affidavit, however, there are easier ways in which folks can resolve issues in their communities. First, communicate effectively, clearly and respectfully at executive board and unit owners' meetings. There are two opportunities for the voices of nonboard members to be heard

– the beginning and the end.

Our brochure titled *Understanding Homeowner Association Meetings* clarifies when, how and on what issues people can speak at these meetings. Some issues should be communicated in writing, such as requests to review or to obtain copies of association records.

Second, whether a board member, owner or tenant, all parties need to educate themselves. This office has substantially increased its education outreach, offering opportunities for HOA residents close to their homes. Education and Information Officer Nick Haley and I (with occasional participation by other staff) have taught several dozen classes each year. We cover subjects such as elections, meetings, law changes following legislative sessions, fiduciary duties, dispute resolution, and the functions of this office.

Plans for 2010 include having three classes per month – one during business hours in the Bradley Building (at 2501 E. Sahara Ave.), another in the evening and yet another on Saturdays (the latter two being at locations such as libraries, senior centers, and HOA meeting rooms). Visits to the Carson/Reno area for classes are also planned several times a year, along with Laughlin, Pahrump and Mesquite at least once a year.

Finally, in communications with others in your association, I strongly encourage civility. I find that a number of problems arise when people approach each other in a hostile or aggressive manner. Civility matters. Listening carefully matters.

In the Informal Conference Program, I see on occasion the need to work toward reducing the stress and hostility that began from poor communication between the parties. When people start to **talk to**

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## COMMUNITY INSIGHTS

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

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**Robert Schwenk, Commissioner**  
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**M. Favil West, Commissioner**  
 Homeowner Member

## Commissioner's Corner Lessons on the role of the state



By **MICHAEL BUCKLEY**  
 COMMISSION CHAIRMAN

As I thought about possible topics for this column, the one that came to mind immediately was to acknowledge the contributions so many of you make to the Commission's process. From our tremendous state employees, who do such a great job of supporting us, to those of you who take the time out of your busy schedules to participate in Commission meetings, thank you! As we look forward to the New Year and the 2011 Legislative Session, know that we as commissioners continue to depend on your interest and support.

I would like to single out in particular the ombudsman, Lindsay Waite, for the professionalism she has brought to her office. We will miss her insights and advice when she leaves this January, but we have all learned much through her commitment to better Nevada associations. Thank you, Lindsay!

There was a sense of great hope when the Commission first began its meetings at the end of 2003. Homeowners statewide felt that an important page had been turned. Many believed that with the creation of the Commission evildoers would be punished and good order restored to associations. As a result, when I first reported back to the Legislature in 2005 I felt disappointment that the Commission seemed to begin life by creating the rules and regulations of a new bureaucracy rather than developing as a force for better common-interest communities.

It took some time for me to understand that crime and punishment is not the business of the Commission or the Ombudsman's Office. I thought I had learned the lesson after a three-day hearing in 2007 involving clear violations of NRS 116. As it concluded, it was clear that the best thing the Commission could do was not to punish the wrongdoing board members (who, in turn, may have had claims for indemnification from the association), but to ensure the affected association had a knowledgeable and involved board with proper financial safeguards and professional management.

Soon after, when news reports surfaced of criminal investigations at certain associations, my first thoughts were: Where was the Division? Why wasn't the Commission involved? It was only when I stopped and thought about it that I realized and remembered: the Division and Commission are not police authorities. Public and private censure and penalties are part of the regulatory

*See CORNER on Page 3*

## Corner

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*Continued from Page 2*

process, but our true missions are licensing and education. Well informed owners, board members, developers and professionals are the best way to stop abuses.

While the regulatory process is slow, the public discussion and debate that accompanies it informs us and can be very beneficial. It is important to remember that the discussion and debate should be about policies, not the meanings of statutes. A recent Commission hearing on the reasonableness of collection costs provides a good example. Much discussion has involved interpretations of statutes granting associations a superpriority lien for six or nine months of assessments. One group argues that only assessments themselves should be included in the superpriority lien. Another argues that it should also include the association's collection costs. The resolution of this dispute requires the interpretation of NRS 116.3116, an interpretation that will not be final until it is clarified by a statutory amendment or a ruling by the Nevada Supreme Court — no matter how many advisory opinions, arbitration awards, district court decisions or regulations are issued in the meantime.

What should not be lost in the debate, however, is what is best for associations, current unit owners and those purchasers who will become unit owners as a sad result of the many foreclosures we have seen in our communities. While the Commission cannot put to rest the issue of what is included in the superpriority, hearings continue to foster an awareness and better understanding of what is important. That is, in determining what are "reasonable" collection costs, the Commission hearings on LCB Regulation 199-09 have allowed frank exchanges based on different perspectives to occur. The regulatory process forces the issue, even though the regulation itself is slow in the making and may not be the final word. The slowness of a state agency is not just a constitutional safeguard, but a chance to learn.

Speaking of frank exchanges, recently there has been public comment critical of views expressed by different commissioners. Let's remember that one of the great benefits of the Commission is the different perspectives it represents: homeowners, management companies, accountants, developers and attorneys all have voices on the Commission. Each commissioner brings a particular knowledge, experience and point of view to take into account when reaching decisions, which are always in public. The exchange among the commissioners is echoed in the public comment portion of our meetings, as owners, managers, board members, investors and others share their problems, experiences, suggestions and perspectives. Certainly one of the great things about Nevada is that we are never far from gaining the ear of someone in charge or with the ability to help.

As we enter the Legislative Session, the Commission will hold meetings to review, analyze and take positions on proposed legislation. We welcome all to participate. Written comments are also welcome. Happy New Year!

## Commission change-up

The Commission on Common-Interest Communities and Condominium Hotels recently added two new members, Robert Schwenk and Scott Sibley, at its October meeting.

Schwenk, a Henderson resident, joins as the community manager representative. He serves Southern Highlands Homeowners Association in the southwestern Las Vegas Valley.

Sibley, a former assemblyman representing Henderson, joins as a homeowner representative. He is publisher of Current Nevada Legal News and a managing partner of El Gran Patron/ Equis Group, a real estate development and management company.

Both were appointed to full three-year terms.

The commissioners replace homeowner representative Donna Toussaint and community manager representative Jeannie Redinger, whose terms expired at the end of September.



**Scott Sibley, left, and Robert Schwenk were recently appointed to 3-year terms on the Commission on Common-Interest Communities and Condominium Hotels.**

## Desk

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*Continued from Page 1*

**each other** at the conferences, instead of to me, there is a good chance of a resolution. So, my final thought as I leave this job is this: People in homeowner associations need to make the efforts to communicate well with each other, and treat each other with respect.

**During 2011, this office will distribute the new Nevada Common-Interest Community Manual, which includes 17 chapters such as "The Board of Directors," "Unit Owners and Other Residents," "Recordkeeping," "Fiscal Matters," "Elections," and "Meetings." It will be available on the Division's Web site, [www.red.state.nv.us](http://www.red.state.nv.us), for viewing and downloading, and will be for sale in binder form as well. We plan to update the manual routinely, and inform folks of the update via email and on the Web site.**

## New Ombudsman positions to enhance compliance



### Jackson brings consumer affairs background to Compliance

Sharon Jackson is no newcomer to resolving disputes, or investigating them. Before coming to the Ombudsman's Office over the summer, she served as a mediator and Deputy Chief Investigator for the Nevada Consumer Affairs Division, where she handled disputes ranging from housing to mechanics.

Her new role as Supervisory Compliance Investigator for the Compliance Section of the Real Estate Division will test her complaint-resolution skills on a single subject: NRS 116. The subject may be new, but the process and the goals are much like her previous duties for the state.

"We are changing the way we serve the public, but our end goal remains the same: to work on cases and resolve disputes," Sharon said.

Sharon is the point of contact for all complaints regarding homeowners associations and community managers, supervising four investigators in Northern and Southern Nevada. She will also assist in presenting educational offerings to the public.

The Compliance section of the Ombudsman investigates potential violations of NRS 116 and related statutes and laws pertaining to HOAs.

### Decades of accounting expertise follows Joe 'O' to Ombudsman

Joe Osisek and his wife, Debbie, had long wanted to live in Las Vegas and were finally able to realize that dream after he retired from a nearly four-decade career as an accountant with Lockheed Martin.

After moving from Orlando, Fla. to the Las Vegas Valley, Joe decided to re-join the workforce and use his professional skills to help his fellow Nevada residents. The certified public accountant brought his number-crunching powers to the Office of the Ombudsman in mid-2010 as a temporary hire over the summer, which later turned into a permanent job.

Joe fills a pivotal role with accounting-related issues. His primary assignments include HOA compliance audits as part of the registration program, and investigative forensic audits where irregularities are alleged and evidence is required to prove or disprove the issue.

As auditor, Joe's resume is overkill. He served at accounting giant PricewaterhouseCoopers International before beginning a nearly four-decade long career with aerospace company Lockheed Martin. With the latter, he held several positions, including senior accounting manager, senior finance manager, corporate accounting manager and acting chief financial officer for its United Kingdom subsidiary.

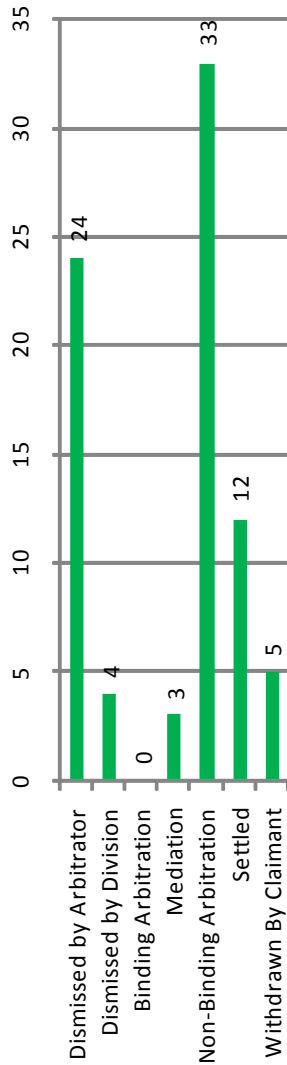
Joe's experience in the for-profit world performing management, audit, accounting and finance functions provide just the right skill set to assist in finance-related compliance issues.

An alumnus of Drexel University in Philadelphia, Joe completed a bachelor of science degree in accounting and finance as well as a master of business administration.





# Alternative Dispute Resolution Claims From March 1, 2010 to November 30, 2010



**NOTE:** For a summary of Alternative Dispute Resolution decisions, visit [www.red.state.nv.us](http://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	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
10-17	09-08-09	03-05-10	Homeowner	Mediation	Enforcement of Governing Documents	Unsuccessful mediation. Each side pays its own fees.
<u>10-31</u>	10-20-09	03-08-10	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitrator found in favor of the Association. Homeowner to pay the Association \$18,656.94; \$15,642.64 in assessments, late fees and fines; \$2,364.30 in attorney fees; and \$650 in arbitrator fees.
<u>10-51</u>	11-30-08	03-08-09	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitrator found in favor of the Association. Homeowner to cure violation and pay the Association \$17,671.73; \$6,100 in fines and fees; \$9480.73 in attorney fees; and \$2,091.00 in arbitrator fees.
09-79	01-22-09	03-09-10	Homeowner	Dismissed by Arbitrator	Fines	Dismissed by arbitrator. Parties settled immediately after arbitrator assigned to claim.
<u>10-30</u>	10-20-09	03-12-10	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitrator found in favor of the association. Homeowner to pay the Association \$7,910.79; \$4,879.09 in assessments, late fees and delinquent expenses; \$2031.70 in attorney fees; and \$1,000 in arbitrator fees.
<u>10-41</u>	10-27-09	03-23-10	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitrator found in favor of the Association. Homeowner to pay the Association \$26,960.74; \$22,961.19 in assessments, late fees and fines; \$3,249.55 in attorney fees; and \$750 in arbitrator fees.
10-47	11-18-09	03-31-10	Homeowner	Mediation	Additional Assessments	Unsuccessful mediation. Each side pays its own fees.
<u>10-35</u>	10-23-09	04-08-10	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitrator found in favor of the Association. Homeowner to pay the Association \$32,081.31; \$30,830.17 in assessments, fees and fines; \$891.14 in attorney fees; and \$360 in arbitrator fees.
<u>10-37</u>	10-23-09	04-08-10	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitrator found in favor of the Association. Homeowner to pay the Association \$17,421.03; \$19,214.82 in assessments, fees and fines; \$819.21 in attorney fees; and \$360 in arbitrator fees.

## Alternative Dispute Resolution Claims From March 1, 2010 to November 30, 2010 Cont.

CLAIM	DATE OPENED	DATE CLOSED	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
<u>10-38</u>	10-23-09	04-08-10	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitrator found in favor of the Association. Homeowner to pay the Association \$29,208.97: \$28,097.13 in assessments, fees and fines; \$751.48 in attorney fees; and \$360 in arbitrator fees.
<u>10-39</u>	10-23-09	04-08-10	Association	Non-Binding Arbitration	Delinquent Assessments	Arbitrator found in favor of the Association. Homeowner to pay the Association \$13,022.37: \$11,872.73 in assessments, fees and fines; \$789.64 in attorney fees; and \$360 in arbitrator fees.
<u>10-50</u>	11-30-09	04-08-10	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitrator found in favor of the Association. Homeowner to pay the Association \$24,182.13: \$13,800 in fines; \$7,238.43 in attorney fees; \$2,163.70 in arbitrator fees; and \$980 for maintenance expenses.
<u>10-54</u>	12-16-09	04-15-10	Homeowner	Non-Binding Arbitration	Revoking of Approved Plans	Arbitrator found in favor of the Homeowner. Each side to pay its own fees.
<u>09-54</u>	11-20-08	04-16-10	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitrator found in favor of the Association. Homeowner to pay the Association \$7,757: \$1,290.00 for fines; \$5,767 in attorney fees; and \$700 in arbitrator fees.
<u>10-53</u>	12-10-09	05-26-10	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitrator found in favor of the Association. Homeowner to pay the Association \$4,355.51: \$3,301.35 in attorney fees and \$1,034.16 in arbitrator fees.
<u>10-57</u>	01-05-10	06-22-10	Homeowner	Non-Binding Arbitration	Fines	Arbitrator found in favor of the Association. Homeowner to pay the Association \$5,173.72 for repairs. Each side to pay its own fees.
<u>10-45</u>	02-26-10	06-25-10	Homeowner	Non-Binding Arbitration	Additional Assessments	Arbitrator found in favor of the Association. Each side to pay its own fees.
<u>10-58</u>	01-08-10	06-30-10	Homeowner	Non-Binding Arbitration	Fines	Arbitrator found in favor of the Association. Homeowner to pay the Association \$7,828 in attorney fees. Parties to split arbitrator fees (\$4,150.00) evenly.
<u>10-49</u>	11-30-09	07-02-10	Homeowner	Non-Binding Arbitration	Delinquent Assessments	Arbitrator found in favor of the Homeowner. Each side to pay its own fees.
<u>10-68</u>	03-10-10	07-06-10	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitrator found in favor of the Association. Homeowner to pay the Association \$12,048.92: \$9,000 in fines; \$2148.92 in attorney fees; and \$900 in arbitrator fees.
10-18	09-15-09	07-08-10	Association	Mediation	Not Funding/Providing Reserve Fund	Successful Mediation
<u>09-43</u>	11-05-08	07-21-10	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitrator found in favor of the Association. Homeowner to pay the Association \$650: \$150 for fines and \$500 for attorney fees. Parties to split arbitrator fees evenly.
<u>09-90</u>	03-09-09	07-22-10	Association	Non-Binding Arbitration	Maintain Landscape/Property	Arbitrator found in favor of the Association. Homeowner to pay the Association \$11,781.29: \$7,700 in fines; \$3,391.29 in attorney fees; \$315 in collections costs; and \$375 in arbitrator fees.

# Alternative Dispute Resolution Claims From March 1, 2010 to November 30, 2010 Cont.

CLAIM	DATE OPENED	DATE CLOSED	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
<u>07-99</u>	10-22-07	07-22-10	Homeowner	Non-Binding Arbitration	Interference with sale of home	Arbitrator found in favor of the Association. Each side pays its own costs.
<u>09-100</u>	03-31-09	07-30-10	Homeowner	Non-Binding Arbitration	Enforcement of governing documents	Arbitrator issued a split decision. Each side prevailed on various issues. Association is to pay the Homeowner \$26,790.88 in attorney fees.
<u>09-120</u>	06-29-09	08-10-10	Homeowner	Non-Binding Arbitration	Revoking of approved plans	Arbitrator found in favor of the Homeowner. Association to pay the Homeowner \$5,833 in costs.
<u>07-67</u>	01-18-07	08-24-10	Homeowner	Non-Binding Arbitration	Additional assessments	Arbitrator issued a split decision. Both sides prevailed on various issues. Each side to pay its own costs.
<u>08-104</u>	04-29-08	08-25-10	Association	Non-Binding Arbitration	Unauthorized improvements	Arbitrator found in favor of the Association. Homeowner to pay the Association \$16,125 in fines. Each side to pay its own costs.
<u>10-04</u>	07-14-09	10-08-10	Association	Non-Binding Arbitration	Maintain landscape/property	Arbitrator found in favor of the Homeowner. Association to pay the Homeowner \$70,100.17: \$63,093.50 in attorney fees and \$7,006.67 in costs.
<u>10-79</u>	04-27-10	10-08-10	Homeowner	Non-Binding Arbitration	Failure to perform fiduciary duties	Arbitrator found in favor of the Association. Homeowner to pay the Association \$5,000 in fines.
<u>10-92</u>	05-27-10	10-08-10	Association	Non-Binding Arbitration	Property damage	Arbitrator found in favor of the Association. Homeowner to pay the Association \$27,965.85: \$17,244.87 in assessments, fees and interest; and \$10,720.98 in attorney fees. Homeowner did not participate.
<u>10-100</u>	06-10-10	10-20-10	Association	Non-Binding Arbitration	Maintain landscape/property	Arbitrator found in favor of the Association. Homeowner to pay the Association \$4,104.01: \$1,915.70 in fines and \$2,188.31 in attorney fees.
<u>10-77</u>	04-12-10	10-21-10	Homeowner	Non-Binding Arbitration	Developer transition	Arbitrator found in favor of the Association. Each side pays its own costs.
<u>11-07</u>	07-28-10	11-01-10	Association	Non-Binding Arbitration	Maintain landscape/property	Arbitrator found in favor of the Association. Homeowner did not participate. Homeowner to pay the Association \$10,215.93: \$2,850 in fines, \$6,340.93 in attorney fees and \$1,025 in arbitrator fees.
<u>10-71</u>	03-17-10	11-18-10	Homeowner	Non-Binding Arbitration	Failure to perform fiduciary duties	Arbitrator found in favor of the Association. Homeowner to pay the Association \$79,789.63: \$21,045 in assessments, \$56,294.63 in attorney fees and \$2,450 in arbitrator fees.
<u>10-74</u>	04-02-10	11-18-10	Homeowner	Non-Binding Arbitration	Revoking of approved plans	Arbitrator found in favor of the Association. Homeowner to reimburse the Association \$2764.29: \$764.29 in carpeting and paint and \$2,000 in attorney fees.
<u>10-102</u>	06-15-10	11-22-10	Association	Non-Binding Arbitration	Maintain landscape/property	Arbitration found in favor of the Association. Homeowner to pay the Association \$20,271.59: \$8,290 in fines, \$9,099 in attorney fees and \$2,882.59 in arbitrator fees.

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

### Comstock Park Homeowners Association, Paul Encke, Darryl Setzkorn, Frank Burfield, Arlene Tellez and Carol Volke Case No. CIS-08-1668 May 2010 Directors

#### Factual Summary

The respondents included Comstock Park Homeowners Association, a common-interest community in Pahrump, Nevada, as well as all members on the board of directors for the association at the time the complaint was filed. None of the individual respondents remained on the board of directors at the time of the settlement. The complaint alleges irregularities with respect to NRS 116 regarding a board election that took place in January 2008.

The association board at the time of settlement obtained counsel and worked with the counsel and the Ombudsman's Office to ensure board elections are in compliance with applicable law. In addition, it has implemented nominating and election committees to conduct the process. The election committee is structured not to include any board members. Finally, the board has retained the expertise of legal counsel and an accountant, and conferred with an insurance professional, to provide appropriate guidance.

Subsequent to the implementation of these procedures and committees, the association has conducted elections in January 2009 and January 2010.

#### Stipulated Settlement

1. The respondents and current board understand that board members must be familiar with Nevada law concerning common-interest communities.

2. The respondents and current board understand that board members must fulfill their duties as board members in compliance with requirements of

applicable law;

3. The current board members shall complete within 90 days of the date of the order the course presented by the Ombudsman's Office entitled "Basics for Board Members" and provide proof of completion to the Division within 30 days after; and

4. The respondents shall complete the course presented by the Ombudsman's Office entitled "Basics for Board Members" before running, being appointed or serving as a board member for any Nevada common-interest community, and shall provide proof of completion to the Division within 30 days after.

5. Due to the efforts to rectify the irregularities, the Division will not pursue any other action in connection with the complaint.

### Via Bianca Mobile Home Estates Association, Cynthia Gawthrop and Joanie Morris Case Nos. IN-09-1487/ CIN-10-07 -05-005 and IN-09-1493/ CIN-10-07-04-004 September 2010 Directors

#### Factual Summary

At all times relevant to the complaint, the respondents were members of the board of directors and officers for the Via Bianca Mobile Home Estates Association, a common-interest community located in Reno, Nevada.

Cynthia Gawthrop resigned her positions Aug. 18, 2009.

The respondents are alleged to have:

1. Failed to mail disclosures with the association's Feb. 17, 2009, election ballots;
2. Failed to have provided an agenda to unit owners for the Feb. 17, 2009, unit owners meeting;
3. Failed to have reviewed financial statements on a quarterly basis for 2008;
4. Failed to acknowl-

### 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.**



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

edge the Complainant's April 10, 2009, complaint letter;

5. Failed to maintain an inventory of "all records of the association" at the time of two complaints filed by member Patricia Proud about March 26, 2009, and May 11, 2009, respectively.

### Stipulated Settlement

1. The current board members shall complete the course presented by the Ombudsman's Office entitled "Basics for Board Members" within six months.
2. Before pursuing election or appointment to any HOA board of directors in Nevada, Ms. Gawthrop also must attend the above-cited class.
3. Neither the Division nor the respondents any concede allegations or defenses. Once the stipulation is fully performed, the Division will close the matter and not pursue any other remedies.

### Smithridge Park Townhouse Association, Linda Swift, Barbara Bristow and Gayle Lee Case No. CIN-10-07-01-001, CIN- 10-07-01-001 A, B and C August 2010 Directors

### Factual Summary

At all times relevant to the complaint, the respondents were members of the board of directors and officers for the Smithridge Park Townhouse Association, a common-interest community located in Reno, Nevada. Linda Swift was president; Barbara Bristow was secretary; and Gayle Lee was director.

Ms. Swift resigned effective Dec. 31, 2009.

The Division alleges that:

1. About Jan. 17, 2009, the respondents held a meeting without proper notice.
2. About Jan. 17, 2009, the respondents met and executed a document pursuant to NRS 82.271(2) entitled "Written Consent in Lieu of Meeting of the Board" renewing a commercial insurance policy.
3. About Jan. 27, 2009, the respondents held a meeting without proper notice.
4. About Jan. 27, 2009, the respondents met and executed three documents pursuant to NRS 82.271(2) entitled "Written Consent in Lieu of

Meeting of the Board" approving a contract with Gr8Dains Handyman Service to repair siding on a building per one document, to clean lint from under buildings and photograph repair needs to be conducted by the same company per another document, and to approve a revised version of the HOA's 2009 budget per a third document.

5. By taking the purported actions of Jan. 17 and 27, 2009, the respondents violated NRS 116.31083(2) by holding a meeting without proper notice and agenda.
6. By taking the purported actions of Jan. 17 and 27, 2009, the respondents violated NRS 116.31083 (5) by not having a proper agenda.
7. Rudolfo Marines, who was hired by Gr8Dains Handyman Service, is the father of Barbara Bristow's grandson.
8. Barbara Bristow did not disclose this relationship in her 2009 application to serve on the board of directors.

### Stipulated Settlement

1. Respondents Gayle Lee and Linda Swift agreed to pay \$250 apiece in administrative fines within 6 months after the effective date of the settlement.
2. Before pursuing any appointment or election to a board of directors for a homeowners association in Nevada, respondent Linda Swift must attend the Ombudsman's class "Basics for Board Members/ Let's Talk About Those Forms."
3. Respondent Gayle Lee agreed to attend the same seminar within six months after the effective date of this settlement.
4. Respondent Barbara Bristow agrees to pay \$500 in administrative fines within six months after the effective date of this settlement.
5. Ms. Bristow also must resign immediately from the board of directors and not run for, or accept appointment to, any association board in Nevada for at least 10 years.
6. After that time, if Ms. Bristow intends to seek appointment or election to a board of directors, she must first attend an Ombudsman class covering all aspects of HOA representation.
7. Ms. Bristow agrees to provide a copy of the settlement agreement to the association for publication in its newsletter.
8. Neither the Division nor the respondents concede allegations or defenses. Once the stipulation is fully performed, the Division will close the matter and not pursue any other remedies.

# The owners' manual for association living

## New guide helps residents, directors find answers to most basic HOA questions

It's all in one place: the answers to the most common association-related questions in a single, convenient compendium.

The Ombudsman's Office hopes to make it easier for HOA residents and others to find answers to routine questions with the release of its brand-new Nevada Common-Interest Community Manual.

The 17-chapter resource, organized as a reference manual, provides definitions, timelines, flowcharts and detailed descriptions of common HOA processes with an emphasis on NRS 116, the central law governing associations in Nevada. At nearly 240 pages, it covers the basics of almost all association business. It will be available to the public as a hard copy for \$10 and may be downloaded for free online at the Real Estate Division's Web site, [www.red.state.nv.us](http://www.red.state.nv.us).

Availability of information has never been the issue, according to Nicholas Haley, education and information officer for the Office of the Ombudsman. The challenge for educators traditionally has been organizing all of that information, making it easy to find and simple to understand.

"There's no shortage of resources available to Nevada homeowners," Haley said. "The challenge for those who are trying to educate themselves is that there are bits and pieces of information everywhere.

"Take, for example, recordkeeping. At first glance, it looks like there is one section that covers this subject directly. However, the sections dealing with meetings and protection of purchasers also impose record requirements, as do other sections. There are also regulations that define how much associations may charge. For volunteers who do other things for a living, this is not very convenient. Much of the manual consists of consolidating

information around a single topic where the average person can find it."

He added that no other resource addresses fundamental questions of NRS 116 and association living in such a condensed format.

"Studying the manual won't make an expert of anyone, but it will bring the business of an association into focus," he said.

"In the chapter on fiscal matters, for example, we try to show some very simple bookkeeping and a brief overview of how a budget is determined. Association finances is always a topic for which people readily claim ignorance, but it's one that cannot be overlooked. Residents should understand where their money is going and why their

assessments are so important."

An advantage of the manual will be the updates. As laws and regulations are adopted and decisions made, the manual will be updated to reflect the current state of the law, making it easier for boards to stay current on the law as is their obligation.

"The manual will always be a work-in-progress," Haley said. "We anticipate many changes early on as we get feedback and suggestions from various sources, but long-term there will always be more material to add and update."

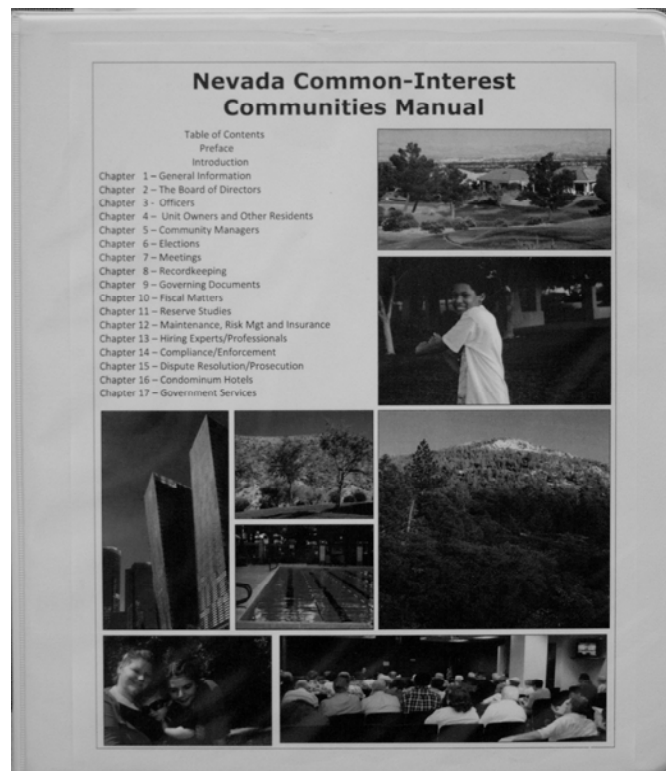
To that end, the Real Estate Division will employ a program officer to maintain the manual. Beyond keeping the content current, the program officer will keep

the public informed of changes through email updates and other means.

Updates regarding the manual are available automatically by subscribing the Ombudsman's email list. To join, contact Nicholas Haley at [nhaley@red.state.nv.us](mailto:nhaley@red.state.nv.us). The emails will identify newly updated chapters, including the latest revision date and offer information on classes and other educational opportunities.

"We send out messages infrequently, no more than once per week," he said.

The manual also serves as the backbone of association education efforts. Ombudsman classes for residents, which average three per month, are focused on teaching various chapters of the manual.



## Alternative Dispute Resolution decisions become available online

Want to see how arbitrators are deciding governing documents disputes? The results are posted online.

The Ombudsman's Office recently began posting completed decisions from the Alternative Dispute Resolution program. They may be found online at <http://red.state.nv.us/CIC/adr.htm>.

Claims are listed year by year with a summary of the parties, the general issue and the decision. More detailed information on each case may be found by clicking on the claim number.

Each claim links to the arbitrator's decision, which typically describes the facts of the case, the arguments made by both sides, and the basis of the arbitrator's decision.

The ADR process, which is outlined by NRS 38, is used in Nevada to resolve disputes concerning the governing documents (with some exceptions) of

homeowners associations.

Although the process is facilitated by the Real Estate Division, decisions are made and mediations moderated by independent contractors who are hired directly by the disputing parties. Only a \$50 processing fee is paid to the Division. All other costs associated with ADR occur outside of its auspices.

Parties have a choice of nonbinding or binding arbitration, or may choose mediation. Mediation seeks a negotiated resolution that is put into writing. Arbitration employs an arbitrator to make a ruling, either in favor of one side or the other, or somewhere in between.

The decisions posted represent only those that have completed arbitration.

Mediations, ongoing cases and cases that have been withdrawn are not listed.



## First temporary community management certificates issued

Prospective community managers have a new route to certification.

With the recent approval of R165-09, the Real Estate Division now accepts applications for temporary community management certificates.

Interested parties may find the application online at the Division's Web site. Form 659, Community Manager Temporary Certificate & Instructions, provides further directions on the application process and may be downloaded.

The application includes the usual administrative

requirements, among them a background check with fingerprint cards, and a \$100 fee. In addition, applicants must demonstrate either:

1. Five years of experience working as a community manager and a professional designation from a nationally recognized organization, or
2. An offer of employment as a community manager from an association or its agent based upon its executive board's determination that the applicant has sufficient experience. The agenda and approved minutes from a meeting in which an executive board voted to hire the applicant is acceptable proof.

The credential expires after one year and is not renewable. However, the holder may apply for a regular community management certificate by meeting three additional criteria within the year:

1. Obtain 18 credits of approved continuing education in NRS 116;
2. Pass the State of Nevada exam for community management; and
3. Do not become the subject of a disciplinary action by the Division or the Commission on Common-Interest Communities and Condominium Hotel.

The first applicants have already completed the process and have been issued certificates.

The temporary certificate was created by statute during the 2009 Legislative Session. It allows the holder to engage in all community management activities that a regular community manager may perform and holds them to the same professional standards. They may not supervise other community managers per NAC 116A.165, or otherwise act as a supervising community manager.

### Did you know ... ?

The Real Estate Division's Northern Nevada office has moved.

In Carson City, the Division set up operations at 1179 Fairview Drive, Suite E, just a short distance down and across the street from its previous location.

While the Southern Nevada office of the Division remains at 2501 E. Sahara Avenue in Las Vegas, it has expanded its presence within the Bradley Building to include Suite 204, which was vacated by the Manufactured Housing Division after it consolidated many of its activities within its Carson City office.

The newly acquired office space is used exclusively by the Office of the Ombudsman for its education and Alternative Dispute Resolution programs.

## Ombudsman revises content for 2011 classes

With the completion of the Nevada Common-Interest Community Manual, the Ombudsman has switched focus to revising its outreach program.

Nicholas Haley, education and information officer for the Ombudsman, said the series of classroom presentations would be updated to complement the content of the new 240-page resource.

“The manual forms a strong foundation for all of our educational efforts,” he said. “It allows us to accumulate and categorize almost all of the information we are able to provide to the public, and do so in an organized fashion.”

“That said, there will always be a place for live presentations. For some people, it’s an opportunity to seek answers to questions on an oftentimes complex subject matter. For others, it’s simply the way they learn best.”

Plans call for three staff-taught classes per month. At least one class per month will be held in a state-owned building in Las Vegas. Also on a monthly basis, staff will visit one public facility — a library, recreation center or some other easily accessible location — on at least one evening and one weekend.

The latter two locations will be offered on a rotating basis. Haley said the objective is to ensure as many Nevada residents as possible have an opportunity to attend

a session. This includes outlying areas such as Pahrump and Mesquite. Staff will also find ways to serve Northern Nevada.

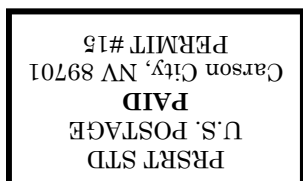
“Bringing classes to Reno and Carson City presents some challenges, but we always ensure our constituents in the north are served,” he said. “We typically time our live appearances in Reno to coincide with Commission business in Carson City.”

Additionally, many of the classes held in state buildings are available via teleconference between Las Vegas and Carson City.

Beyond the staff-taught sessions, the Ombudsman plans to offer classes covering specialized topics, such as reserve studies, with help from contracted experts.

For a list of upcoming class times and locations, visit <http://red.state.nv.us/CIC/cic.htm> and click on Ombudsman seminars.

“Class participation increased substantially throughout 2009 and again in 2010. Over time, we have seen HOA residents, including those participating in our classes and using our other services, become more savvy and more engaged in the affairs of their communities. Long-term, we are beginning to see the benefits of informed board members and residents. It takes time, but it’s happening.”



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