

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM  
HOTELS MEETING  
FEBRUARY 23, 2011  
OFFICE OF THE ATTORNEY GENERAL  
100 N. CARSON STREET  
MOCK COURTROOM  
CARSON CITY, NEVADA 89701**

**VIDEO CONFERENCED TO:  
OFFICE OF THE ATTORNEY GENERAL  
555 E. WASHINGTON AVE.  
ROOM 4500  
LAS VEGAS, NEVADA 89101**

**MINUTES**

**FEBRUARY 23, 2011**

**8:39 A.M.**

**1-A) Introduction of Commissioners in attendance.**

Gary Lein, Randolph Watkins, Michael Buckley, M. Favil West, Robert Schwenk, Marilyn Brainard, Scott Sibley and Senior Deputy Attorney General Deonne Contine acting as Commission Counsel.

**1-B) Introduction of Division staff in attendance.**

In Carson City: Sonya Meriweather, Program Officer; Sharon Jackson, Supervisory Compliance Investigator; Teralyn Thompson, Commission Coordinator; Gail Anderson, Administrator; Christopher Cooke, Compliance Investigator; Gina Session, Chief Deputy Attorney General representing the Real Estate Division.

In Las Vegas: Nicholas Haley, Education Officer; Joanne Gierer, Legal Administrative Officer; Sherri Powell, Training Officer.

**2) Public Comment**

In Carson City:

Joe Bower commented on NRS 116.330. Mr. Bower stated that he would like to see NRS 116.330 made stronger by adding a number of days for associations to bring non-conforming landscaping guidelines into conformance. Mr. Bower stated that NRS 116.330 describes drought resistant landscaping to include decorative rock and artificial turf. Mr. Bower stated that he is aware of associations that permit juniper to be used for drought resistant landscaping.

Mr. Bower commented on NRS. 116.3083(7). Mr. Bower stated that he believes that the intent of this statute is to permit owner to receive a copy of the audio recording of board meetings at no cost in electronic format. Mr. Bower stated that the electronic format needs to be more specifically described. Mr. Bower suggested adding language that states “copy of the audio recording to be made available as a no cost attachment to an email or as a CD, as preferred by the requesting owner.”

Mr. Bower commented on NRS 116.12065. Mr. Bower suggested adding a few words to this statute to clarify that sending documents electronically is allowed. Mr. Bower stated that this would be a great addition and a huge cost savings to associations. Mr. Bower stated that “electronically” should be defined as an attachment to an email or a CD as preferred by the receiving party.

Mr. Bower commented on re-opening a closed complaint. Mr. Bower stated that he would like to see a policy where a re-opened intervention affidavit is assigned to a different investigator than the one who previously closed the intervention.

Mr. Bower stated that Form 605 which is the Ombudsman Intervention Reopening Affidavit Form and instruction page was last revised April 8, 2005. Mr. Bower stated that this form needs some cosmetic changes and updating. Mr. Bower stated that spaces to add information are too small and the address for the Real Estate Division is incorrect.

Mr. Bower submitted a written document of his public comment.

**3-1) Disciplinary Action**

**NRED v. Tomerlin Trust f/k/a William R. Tomerlin Trust; William R. Tomerlin, Trustee; Marsha Tomerlin, Trustee and Sierra Country Inc., Trustee  
Case No. IN-10-1504 & CIN-10-12-04-061**

**Type of Respondent: Declarant**

Chief Deputy Attorney General Gina Session was present representing the Real Estate Division.

The respondent was not present.

Preliminary Matters:

Ms. Session provided the Commission with a copy of a civil complaint filed in Douglas County. Ms. Session stated that the civil complaint is in regards to the lack of formation of the homeowner association. Ms. Session provided the Commission with a copy of NAC 116.630 regarding request for hearing prohibited after initiation of civil action or submission for mediation or arbitration. Ms. Session stated that based on NAC 116.630, she requested that this matter be tabled until the civil cases are resolved or if Ms. Session can come to a resolution with the parties in light of the civil actions.

Commissioner Watkins moved to table this matter. Seconded by Commissioner Schwenk. Unanimous decision.

**4-A-1) Administrative Program Officer's report on Intervention Program.**

Sonya Meriweather presented this report. Ms. Meriweather stated that the top three alleged issues are regarding NRS 116.31083, NRS 116.31177 and NAC 116.405.

Commissioner West stated that he would like to see how many unsubstantiated claims are regarding NRS 116.31083, NRS 116.31177 and NAC 116.405.

Commissioner Watkins commented on page 4 under "Status of Active Cases: 96". Commissioner Watkins stated that he is concerned with the cases that are nine months to a year and older. Commissioner Watkins asked why it is taking so long for these cases to come to resolutions.

Ms. Meriweather stated that Sharon Jackson would report on this issue during her report.

Commissioner West requested that Ms. Meriweather break down the particular communities filing most of the intervention affidavits.

Ms. Meriweather stated that Ms. Jackson is working on compiling information for a report that correlates associations with the number of complaints being filed.

Commissioner Schwenk stated that a report on the number of complaints per homeowner association would be helpful and the percentage of households that represents.

**4-A-2) Administrative Program Officer's report on Number and types of associations registered within the State.**

Sonya Meriweather presented this report.

- 2,956 association with more than 475,000 units in them

**4-A-3) Administrative Program Officer's report on Homeowner Association and Compliance Audits.**

Sonya Meriweather presented this report.

- As of December 31, 2010 the number of delinquencies reduced by 61% or 243 associations of the 399 associations that were delinquent in June 2010.

Commissioner Watkins stated that management companies and self managed associations on page 12 of the report should be identified by name.

Commissioner Watkins asked what is being done about the self managed association that has been delinquent since August 2007.

Ms. Meriweather stated that associations and management companies with multiple delinquencies receive a visit from the auditor who audits the association's records. Ms. Meriweather stated that the association that has been delinquent since August 2007 might be an association that the Ombudsman's Office cannot contact because the only address belongs to the declarant and the physical location is not known.

**4-A-4) Administrative Program Officer's report on Alternative Dispute Resolution filings and subsidy claims.**

Sonya Meriweather presented this report.

- Number of Alternative Dispute Resolution claims filed has decreased.
- As of December 31, 2010: Forty-nine active cases opened

Chairman Buckley requested that the Commission receive the closed claim report again because he has heard people complain about fees paid to the arbitrator being very expensive.

Ms. Meriweather stated that the closed claims are on the Division's website with the decision from the arbitrator which includes the arbitrator's fees.

Ms. Meriweather reported on Case# 08-105 with duration of 2 years, 8 months and 8 days. Ms. Meriweather stated that the homeowner is in bankruptcy. Ms. Meriweather stated that the arbitrator is awaiting word from the attorney for the association on whether the association intends to proceed or will the attorney petition bankruptcy court to remove the association from automatic protection from civil action.

Ms. Meriweather reported on Case#10-19 with duration of 1 year, 3 months and 20 days. Ms. Meriweather stated that the claim was closed and the arbitrator's notes in the decision state that the claimant's attorney made it longer than necessary.

Ms. Meriweather reported on Case# 10-24 with duration of 1 year, 3 months and 1 day. Ms. Meriweather stated that the arbitrator stated that the attorneys involved are trying to settle however the arbitrator has not received productive results and wants to proceed with the claim.

**4-A-5) Administrative Program Officer's report on Notices of Sales.**

Sonya Meriweather presented this report.

- As of December 31, 2010: 1,828 notices of sales received by the Division with 87 units sold

**4-B) Report on the Ombudsman's conferences.**

Sonya Meriweather presented this report.

- 132 affidavits received
- 25% of the parties agreed to meet
- 22 conferences held
- 27 resolutions reached as a result of the conference
- 9 pending resolutions

Ms. Meriweather stated that the Program Officer is handling the Ombudsman conferences on specific issues until the Ombudsman position is filled.

**4-C) Compliance Section's current caseload report.**

Sharon Jackson presented this report.

- 194 active cases
- Of the 194 active cases: 81 cases are from Statements of Facts which are complaints against certificate holders.
- Of the 194 active cases: 113 active intervention affidavits

Ms. Jackson stated that there is one investigator in Northern Nevada and three investigators in Southern Nevada handling 194 cases and about 600 telephone calls per month.

Commissioner Lein stated that it would be useful for the Commission to know out of the active cases under Statement of Fact, how many multiple cases are related to one community manager.

Commissioner Watkins requested that the Compliance report be submitted with the Commission meeting packets.

**4-D) Administrative fine report pursuant to NAC 116A.350(4).**

Sharon Jackson presented this report.

- One administrative fine issued that has been completed
- Two administrative fines pending to be completed May 2011.
- Administrative fines are not public information until after the 30 day appeal process.

**5-A) Attorney General's case status report.**

Deonne Contine represented this report.

- Tomerlin Trust case will remain on the attorney general's case status report

**5-B) Discussion regarding NRS 116.017 as it relates to common elements and the need to have a reserve study when no common elements exist.**

Commissioner Lein prepared a document entitled "Prepared by Gary Lein 2-22-11" for the Commission to review.

Ms. Meriweather stated that on page two of the annual registration form where it asks for reserve study information, some associations are writing "No common elements" and therefore informing the Division that a reserve study will not be prepared. Ms. Meriweather stated that this is a concern because who will be held accountable if there are common elements for which these associations should reserve. Ms.

Meriweather stated that by stating this information on the annual registration form, no one is attesting that responsibility.

Chairman Buckley stated that if an association is stating that there are no common elements, a copy of the public offering statement or deed to a unit should be provided to the Division as proof.

Ms. Meriweather stated that some associations will say that they do not have “major components of the common elements” as stated in statute such as a dirt lot owned by the unit owners which is not subject to “repair, replace and restore” and does not require a reserve study.

Commissioner Lein stated that he thinks that some of the late filings are due to board members reviewing the annual registration form and realizing that the association is not doing what is required by statute and the concern in finding documents with inaccurate statements.

Commissioner Lein stated that Form 609-Reserve Study Summary Form is required when an association has a reserve study prepared under NRS 116.31152. Commissioner Lein stated that once the reserve study has been adopted by the board of directors, Form 609 must be submitted to the Division within 45 days. Commissioner Lein stated that he and Ms. Meriweather had discussed adding language to the document where an affirmative statement is being made that there are no common elements and the association is not subject to the requirements of NRS 116.31152.

The Commission agreed that a member of the association must submit Reserve Study Summary Form (NRS 116.31152) #609 regardless of the position the association is taking regarding the association’s common elements.

**4-F-1) Administrator’s report on Personnel.**

Gail Anderson presented this report.

- Ombudsman Lindsay Waite retired January 31, 2011.
- Ombudsman position will be posted on the Real Estate Division website and through the State of Nevada Department of Personnel under unclassified position.
- Sherri Powell is the new Training Program Officer.
- Jan Holle is the new Chief Compliance Investigator as of December 22, 2010.

**4-F-2) Administrator’s report on an Overview of the Governor’s recommendation for Common-Interest Communities budget account and performance indicators.**

Gail Anderson presented this report. Ms. Anderson provided the Commission with a document entitled “State of Nevada Budget Division Line Item Detail & Summary 2011-2013 Biennium (FY12-13)” dated 2/16/11 and the Real Estate Division organizational chart.

Ms. Anderson reviewed the budget summary with the Commission.

**4-F-3) Administrator’s report on an Overview of the Governor’s recommended budget for Real Estate Administration budget account.**

Gail Anderson presented this report.

Ms. Anderson reviewed the Real Estate Division organizational chart with the Commission.

- Real Estate Division budget account will go from 36 full time employees to 15.8 employees.
- 56% staffing reduction from 2008
- Position in the Inspector of Structures program eliminated February 2010.

- Projects Section went from four full time employees in fiscal year 2008 to one 0.6 part time employee in fiscal year 2012 which is an 85% reduction of staff. This office will be closed for at least two days per week.
- Real Estate Compliance Section will have a 49% staff reduction. Real Estate Compliance section went from eight positions in fiscal year 2007 to 3.6 positions in fiscal year 2012 which includes one part time investigator in the Division's Carson City office. Real Estate Compliance section in Carson City will be closed at least two days per week.
- Licensing Section will have a 57% staff reduction. Licensing Section went from fourteen full time employees in fiscal year 2008 to six employees in fiscal year 2012. Licensing Section in Carson City will be closed.

**4-F-4) Administrator's report on Implementation of online renewals of Real Estate Division licensing programs including attestation of continuing education requirements and audit follow-up.**

Gail Anderson presented this report. Ms. Anderson stated that the Division started online license renewals for real estate brokers July 2010. Ms. Anderson stated that by December 2010 all real estate licensees were able to renew their licenses online.

Ms. Anderson stated that in July 2010 there was an average of 1.3 transactions per day for real estate brokers and 7.4 transactions per day by December 2010.

Ms. Anderson stated that the challenge with online renewals has been verification of education certificates. Ms. Anderson stated that when community managers are able to renew online, the Division will audit education for renewals.

**5-C) Discussion regarding whether video conferencing pre-certification courses for community managers are permissible as classroom presentations or considered distance education as defined in NAC 116A.040.**

Nicholas Haley stated that there was a request for the Commission's position by Key Realty School. Mr. Haley stated that since Key Realty School's attendance is down, they are looking to consolidate classes. Mr. Haley stated that Key Realty is looking to conduct classes by video conferencing. Mr. Haley stated that there would be a consistent communication by video conference between northern Nevada and southern Nevada at the same time. Mr. Haley stated that the alternative is that Key Realty School would not be able to offer classes as often in certain locations.

Mr. Haley stated that Key Realty is asking if video conferencing falls into the category of distance education or classroom presentation. Mr. Haley stated that there would be a proxy at both locations.

Mr. Haley stated that allowing video conferencing to be considered a classroom presentation would serve the interest of the State as long as there is a proxy.

Deonne Contine suggested that Mr. Haley seek advice from Ms. Anderson who should then speak to Division counsel regarding the proper application of the statute. Ms. Contine suggested that Key Realty School go through the advisory process in NRS 116.

Commissioner Watkins stated that he thinks that Key Realty should be able to video conference its course. Commissioner Watkins stated that the possibility of not having pre-certification courses in northern Nevada would put a great burden on someone applying to be a provisional community manager.

**5-D) Discussion and possible action regarding amending NAC 116.480, NAC 116.482 and NAC 116.484 regarding gifts and gratuities for community managers and board members.**

Commissioner Watkins stated that if the gift was over a certain dollar amount, it could not be accepted. Commissioner Watkins stated that NAC 116.480, NAC 116.482 and NAC 116.484 should be reviewed and the values should be brought up to today's standards. Commissioner Watkins requested that he and Commissioner Schwenk review the regulations and make proposed changes to bring before the Commission to review.

The Commission agreed.

**5-E) Discussion and possible action to approve minutes of the December 7-8, 2010 Commission meeting.**

Commissioner Brainard stated the word "that" was missing under agenda item 8-D in the second paragraph last sentence.

Commissioner Brainard stated that under agenda item 9-C the first paragraph is missing the word "to".

Commissioner Brainard stated that under agenda item 9-C Ms. Contine's title should be corrected to state Senior Deputy Attorney General.

Commissioner Brainard moved to approve the minutes with corrections. Seconded by Commissioner Watkins. Unanimous decision.

**6-1) Community Associations Institute  
"Professional Liability for Managers"**

**Request: 3 hours      General      Classroom**

Nicholas Haley presented this course.

Each Commission member disclosed that they know the applicant but votes will not be impaired.

Commissioner Brainard moved to approve this course for three hours of general credit. Seconded by Commissioner West. Unanimous decision.

**6-2) Fenton, Grant, Mayfield, Kaneda & Litt  
"HOA Caselaw 2011 Update"**

**Request: 3 hours      General      Classroom**

Nicholas Haley presented this course.

Each Commission member disclosed that they know the applicant but vote will not be impaired.

Commissioner Brainard moved to approve this course for three hours of general credit. Seconded by Commissioner Schwenk. Unanimous decision.

**5-I) Discussion regarding Commissioners' speaking engagement requests.**

Commissioner Watkins stated that he was asked by the local Boys Scout troop to speak about civic issues.

Commissioner Brainard stated she gave an overview on trends at the national level for homeowner associations at a luncheon gathering to a San Jose chapter of CAI.

Commissioner West stated that he will be giving two speaking engagements to two Japanese delegations with each group about 25-30 people in February or March.

**5-F) Discussion and possible action regarding the Commission for Common-Interest Communities and Condominium Hotels' guidelines on attendance, participation and taking legislative positions during legislative hearings.**

Chairman Buckley stated that the Commission will discuss the Commission's position on bills at the Commission meetings that will be scheduled in March. Chairman Buckley stated that the Commission will decide on whether or not to submit written or verbal testimony before the Legislature for certain bills.

Deonne Contine reminded the Commission that they are not to speak for the Commission in front of the Legislature until the Commission has taken a position. Ms. Contine stated that commissioners are allowed to speak in front of the Legislature as their own person but to be sure to make the distinction as to their role.

Chairman Buckley stated that he, Commissioners Watkins and Lein have participated in Senator Copening's committee and subcommittees to discuss proposed legislation as individuals and not for the Commission. Chairman Buckley stated that he will be helping Senator Copening present Senate Bill 174 and Commissioner Watkins is giving a presentation to educate on how homeowner associations operate on February 24th.

**5-H-3) Discussion and possible action concerning proposed regulations and assessment of how each regulation is consistent with the Governor's regulatory priorities to protect the health and welfare of the people of the State of Nevada without discouraging economic growth: LCB File No. R186-07 concerning condominium hotel regulations adopted by the Commission December 7, 2010.**

Gail Anderson stated that she spoke to the Director of Business and Industry, Terry Johnson, and requested that Mr. Johnson ask the Governor's Office to place this regulation on the agenda for the Legislative Commission to finish the adoption process.

**5-H-4) Discussion and possible action concerning proposed regulations and assessment of how each regulation is consistent with the Governor's regulatory priorities to protect the health and welfare of the people of the State of Nevada without discouraging economic growth: LCB File No. R164-09 concerning reserve study specialists adopted by the Commission December 7, 2010.**

Gail Anderson stated that she spoke to the Director of Business and Industry, Terry Johnson, and requested that Mr. Johnson ask the Governor's Office to place this regulation on the agenda for the Legislative Commission to finish the adoption process.

**5-H-5) Discussion and possible action concerning proposed regulations and assessment of how each regulation is consistent with the Governor's regulatory priorities to protect the health and welfare of the people of the State of Nevada without discouraging economic growth: LCB File No. R199-09 concerning collection costs adopted by the Commission December 7, 2010.**

Gail Anderson stated that she spoke to the Director of Business and Industry, Terry Johnson, and requested that Mr. Johnson ask the Governor's Office to place this regulation on the agenda for the Legislative Commission to finish the adoption process.

**5-H-6) Discussion and possible action concerning proposed regulations and assessment of how each regulation is consistent with the Governor’s regulatory priorities to protect the health and welfare of the people of the State of Nevada without discouraging economic growth: LCB File No. R156-09 concerning the form, type and amount of the bond which must be posted by an applicant or the employer of an applicant, for the issuance, renewal or reinstatement of a certificate as a community manager.**

Gail Anderson stated that this regulation will probably become law soon and the Commission will not have to worry about this regulation unless nothing changes during legislative session.

**5-H-1) Discussion and possible action concerning proposed regulations and assessment of how each regulation is consistent with the Governor’s regulatory priorities to protect the health and welfare of the people of the State of Nevada without discouraging economic growth: LCB File No. R121-10 concerning unit owners’ complaints; unit owners’ right to counsel; changes to NAC 116.410 and NAC 116.482.**

Gail Anderson stated that she did not put urgency behind this regulation.

Commissioner Lein stated that the AICPA Guide is no longer in circulation and that the last publication was in September 2009. Commissioner Lein stated that the changes in this regulation would conform to the changes in LCB File No. R186-07 where the PPC Guide has been referenced as an alternative. Commissioner Lein stated that this section of the proposed regulation change is important.

Ms. Anderson stated that the Division has not received a draft from the Legislative Counsel Bureau for this proposed regulation.

Commissioner Lein stated that there is a proposed change to NAC116.480(2) that should be changed immediately.

**5-H-2) Discussion and possible action concerning proposed regulations and assessment of how each regulation is consistent with the Governor’s regulatory priorities to protect the health and welfare of the people of the State of Nevada without discouraging economic growth: LCB File No. R204-09 concerning service of process on out of state persons.**

Gail Anderson stated that the Division has not received a draft from the Legislative Counsel Bureau for this proposed regulation.

**7) Discussion and possible action on date, time, place, and agenda items for upcoming meetings.**

The Commission set the calendar for the March and April legislative teleconference meetings for every Friday at 9:00 a.m. beginning March 4, 2011.

The next Commission meeting April 26-28, 2011 in the south.

**5-G-1) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: Senate Bill 30.**

Gail Anderson stated that there was testimony on cost for copies. Ms. Anderson stated that the bill may be amended to match another section of NRS 116.

Commissioner Watkins commented on section 1(3)(c). Commissioner Watkins asked if \$5,000.00 could be transferred.

Ms. Anderson stated that an electronic transfer is required if the amount is \$10,000.00 or greater but one is not precluded from transferring \$5,000.00.

Ms. Anderson stated that she presented the bill and there were some clarifying questions from the committee. Ms. Anderson stated section 2(3) “but not to exceed 25 cents per page” might be changed because there is another place in the law that states “25 cents per page for the first six copies and 10 cents per page for subsequent copies.”

Chairman Buckley stated that section 2(3) is the existing law from the repealed section.

#### Section 1

Commissioner West commented on section 1(4). Commissioner West stated that he is concerned that money can be moved from the reserves electronically. Commissioner West stated that if money is going to be stolen from an association, this is where it would come from. Commissioner West stated that some reserves often have a large amount of money. Commissioner West stated that someone could hit a button on the computer and all of the money could be gone.

The Commission agreed to copy the language from Senate Bill 174(14) and replace section 1 of Senate Bill 30 with this language.

#### Section 2

Commissioner West suggested changing section 2(3) to 14 business days. Commissioner West stated that 14 business days would give the board an opportunity to get the copies prepared in a reasonable time without having to worry about someone complaining to the Division.

The Commission agreed to change to “14 business days” in section 2(3).

#### **5-G-2) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: Senate Bill 89.**

Commissioner Lein stated that he presented information before the Senate Judiciary Committee regarding this bill. Commissioner Lein stated that the issue is the amendment to section 1(a). Commissioner Lein stated that it reads “review the financial statements of the association” suggesting that it would be the executive board that would be preparing a reviewed financial statement and the Nevada State Board of Accountancy has an issue with that.

Commissioner Lein stated that under NRS 116.31083 all associations are required to review the financial records and statements of the association on a quarterly basis. Commissioner Lein stated that the two sections conflict. Commissioner Lein stated that only a CPA can prepare a reviewed or audited financial statement. Commissioner Lein stated that the Commission already adopted NAC 116.461 which is the guide. Commissioner Lein stated that Chapter 628 is referenced in that regulation which is the Nevada State Board of Accountancy statute.

Commissioner Lein stated that he testified that section 1(a) should be revised to read “if the annual budget of the association is less than \$45,000 the association is not required to have a reviewed or audited financial statement prepared by an independent certified public accountant.”

Commissioner Lein stated that section 1(3)(b)(1) and (2) should be deleted. Commissioner Lein stated that section 1(3)(b)(2) has already been done through NAC 116.461 by adopting the Guide and referencing NRS 628.

**5-G-3) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: Assembly Bill 85.**

The Commission agreed to defer discussion on this bill until they received a clear understanding as to what is Rule 23 of the Nevada Rules of Civil Procedure.

**5-G-5) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: Senate Bill 165.**

Chairman Buckley stated that he did not know if this bill is in the purview of the Commission since the Commission does not govern NRS Chapter 38.

Gail Anderson stated that the Division follows NRS 38.300 to NRS 38.360. Ms. Anderson stated that the bill would only apply if it carried over the entire NRS 38. Ms. Andersons stated that this would come up as an issue with the proposed regulations to cap the fees and to not allow attorney awards.

The Commission did not take a position on Senate Bill 165 because the Commission does not govern NRS Chapter 38.

**5-G-15) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 10-610 (Senate Bill 183).**

Chairman Buckley stated that he does not think the Commission needs to take a position on this bill. Chairman Buckley stated that the bill is requiring that the Commission adopt regulations on prescribing specifications of any device, structure or item used by a unit’s owner or tenant to screen recycling containers, including, without limitation, the size, location, color, material, maximum cost and manner of attachment of the device, structure or item. Chairman Buckley stated that the Commission is called upon to adopt regulations by December 31, 2011.

Chairman Buckley stated that a letter should be sent from the Commission stating that the portion of the bill requiring the Commission to adopt regulations will result in additional demand on the Division. Chairman Buckley stated that for the Commission to develop guidelines, the Commission would need to speak to architectural or design consultants.

**5-G-7) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: Senate Bill 174.**

**Section 1**

Gail Anderson read section 1(1). Ms. Anderson stated that this section is impractical. Ms. Anderson stated that one problem that concerns her is how a party who does not like a closing letter received from the Division can come before the Commission to receive a decision. Ms. Anderson stated that the Commission could not hear the case, receive the investigative file or see any of the responses from the party or parties that would be exhibits during a disciplinary hearing.

Ms. Anderson requested that this section be worked on in the subcommittee.

The Commission agreed with Ms. Anderson.

**Section 2**

Commissioner Watkins stated that the sponsor of the bill is going to withdraw this section and it will be a nonissue.

### Section 3

The Commission had no objections to this section.

### Section 4

Commissioner Brainard stated that she is in strong agreement with section 4.

Commissioner Watkins stated that on page 8 line 43 the language will be changed from “must” to “shall”.

### Section 5

The Commission had no objections to this section.

### Section 6

The Commission decided that they need more information from last legislative session regarding this section. The Commission will revisit this section.

### Section 7

Commissioners West, Brainard and Schwenk proposed to change the language to state ‘twenty-five cents per page’ all the way across.

The Commission was in agreement that electronic mail should be acceptable.

### Section 8

Commissioner Brainard stated that she was not in agreement with section 8(3). Commissioner Brainard stated that there are some boards that try to conduct business that is not to be conducted in executive session.

Commissioner Lein stated that mailing notices for executive board meetings can cost some associations thousands of dollars.

Chairman Buckley stated that one of the changes that will come to section 8 of the bill is that the board must disclose at their next regular meeting that the board met in executive session and the general subject matter.

### Section 9

Chairman Buckley stated that “physical and mental health” in section 9(3)(b) will be stricken.

Commissioner West stated that “failure to perform” should be moved to the beginning of section 9(3)(e).

### Section 10

Commissioner Lein stated that his concern with section 10(1)(c) is the “amount equal to 3 months of aggregated assessments on all units plus reserve funds.” Commissioner Lein stated that for community managers working for larger master plan communities, it could be a substantial dollar amount.

### Section 11

The Commission had no objections to this section.

### Section 12

The Commission had no objections to this section.

### Section 13

The Commission had no objections to this section.

### Section 14

The Commission agreed that section 14 should replace section 1 of Senate Bill 30.

### Section 15

Chairman Buckley stated that this section is consistent with the Commission's advisory opinion and will be a big issue.

### Section 16

Commissioner Watkins stated that section 16(2)(b) should state the same thing as section 16(2)(a) because "or another unit's owner" is omitted from section 16(2)(b).

Gail Anderson stated her concerns about expanding into civil matters. Ms. Anderson stated that the Commission would have to define "retaliatory action" if this section is to pass.

### Section 18

Chairman Buckley stated that section 18(4)(d) will be removed.

### Section 20

The Commission had no objections to this section.

## **8) Public Comment**

In Las Vegas:

Tim Stebbins commented on section 1 of Senate Bill 174. Mr. Stebbins stated that he has copies of several letters of instruction and none of the letters have any information on them regarding procedures for an appeal.

William Wright with Angius & Terry commented on the Commission's discussion regarding a homeowner who has filed nineteen separate intervention affidavits on the same subject. Mr. Wright suggested that the Commission and Division ask their counsel to research the administrative law regarding a judiciary body stopping the abuse of its own process. Mr. Wright stated that vexatious litigation is different from false, fraudulent or frivolous actions. Mr. Wright stated that vexatious litigation can be litigations or claims filed that have merit but the claims are filed in such a repetitive nature that they are meant to oppress and delay.

## **10) Adjournment**

Meeting recessed until February 24, 2011 at 10:00 a.m.

**COMMISSION FOR COMMON-INTEREST COMMUNITIES AND CONDOMINIUM  
HOTELS MEETING  
FEBRUARY 24, 2011  
PUBLIC UTILITIES COMMISSION OF NEVADA  
1150 E. WILLIAMS STREET  
CARSON CITY, NEVADA 89701**

**VIDEO CONFERENCED TO:  
PUBLIC UTILITIES COMMISSION OF NEVADA  
9075 WEST DIABLO DR. STE 250  
LAS VEGAS, NEVADA 89148**

**MINUTES**

**FEBRUARY 24, 2011**

**10:03 A.M.**

**1-A) Introduction of Commissioners in attendance.**

Gary Lein, Randolph Watkins, Michael Buckley, M. Faval West, Robert Schwenk, Marilyn Brainard, Scott Sibley and Senior Deputy Attorney General Deonne Contine acting as Commission Counsel.

**1-B) Introduction of Division staff in attendance.**

In Carson City: Teralyn Thompson, Commission Coordinator; Gail Anderson, Administrator; Christopher Cooke, Compliance Investigator;

In Las Vegas: Joanne Gierer, Legal Administrative Officer

**2) Public Comment**

None

**5-G-4) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: Senate Bill 185.**

**Section 16**

Commissioner Watkins asked if the Commission could get clarification from the drafter of section 16(1) as to what section 16(1) means. Commissioner Watkins stated that he does not think that the intent of this section includes something that is already allocated in the budget. Commissioner Watkins stated that if that clarification was made, the rest of the section would make sense.

**Section 17**

The Commission agreed that associations ought to be allowed to use radar guns as long as the radar guns are used correctly, calibrated properly and procedures are in place.

**Section 18**

The Commission had no objections to section 18(1)(l)(1).

Chairman Buckley stated that whoever is responsible for section 18(1)(m)(1) of Senate Bill 185 should be made aware that things change and what is of record may not be accurate in the future.

Section 21

The Commission had no objections to the changes in this section.

Section 24

The Commission agreed that section 24(4) is not necessary.

Section 25

The Commission agreed that section 25(2) is not appropriate for actions of the Ombudsman.

The Commission decided that they would have to re-visit this bill and take official positions.

**5-G-18) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: Senate Bill 195.**

The Commission did not agree with Senate Bill 195.

Commissioner Watkins stated that the Commission spent a lot of time preparing language for LCB File No. R199-09 and the regulation got caught in the midst of the election of a new governor and the hold on all regulations. Commissioner Watkins stated that the Commission should wait until the other collection bill comes out and balance that bill and Senate Bill 195 together.

The rest of the Commission agreed with Commissioner Watkins.

**5-G-6) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 72.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-8) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 10-263.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-9) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 10-264.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-10) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 295.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-11) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 10-298.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-12) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 10-346.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-13) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 513.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-14) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 3-540.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-16) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 10-658.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-17) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 709.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-19) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 860.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**5-G-20) Discussion and possible action regarding the 2011 Legislative Bills and Bill Draft Requests (“BDR”) that relate to NRS Chapters 38, 116, 116A and 116B which may impact the Commission, Ombudsman’s Office or the Real Estate Division: BDR 958.**

At the time of the meeting there was no language for this bill draft request to be discussed by the Commission. This agenda item will be discussed at a future date once language has been brought forth.

**7) Discussion and possible action on date, time, place and agenda items for upcoming meetings.**

Commissioner Brainard stated that she would like an update from Ms. Anderson on LCB File No. R099-10 regarding arbitration at the next Commission meeting.

Commissioner Brainard stated that she would like an agenda item regarding mandatory education for a set number of minutes at an executive board meeting by community managers.

**8) Public Comment**

Carson City:

Gail Anderson commented. Ms. Anderson stated that she misspoke during the discussion regarding the closing letters that come from Compliance. Ms. Anderson stated that when the Division closes an investigation with no further action, the letter sent to the complainant does not state other remedies that can be used. Ms. Anderson stated that the Division has a procedure for re-opening a compliance case and the form for this procedure is located on the Division's website.

**9) Commissioner Comments**

Commissioner Schwenk asked Ms. Anderson for an update on the manual.

Ms. Anderson stated that she is reviewing the manual and has requested edits. Ms. Anderson stated that it will be released chapter by chapter through the Division's website. Ms. Anderson stated that the manual will not be in a hardcopy form until it is all finalized. Ms. Anderson stated that the Division will wait until after the legislative session is over before it will provide the manual in hard copy form.

Commissioner West thanked Commissioners Buckley, Lein and Watkins for their work on Senate Bill 174.

**10) Adjournment**

Meeting adjourned February 24, 2011 at 1:28 p.m.

Respectfully Yours,

Teralyn Thompson  
Commission Coordinator