



COMMUNITY INSIGHTS

VOLUME II, ISSUE I

Department of Business and Industry, Real Estate Division

Winter 2005

*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

The mission of the Office of the Ombudsman for Owners in Common-Interest Communities is to assist homeowners and elected or appointed officials in understanding their rights and responsibilities under Chapter 116 of Nevada law and their governing documents.

Inside this issue ...

<i>Ombudsman for CIC to retire in 2006</i>	... 2
<i>Permit Required for Reserve Study Specialist</i>	... 4
<i>Community Association Manager Responsibilities</i>	... 5
<i>Fiduciary Duty of the Executive Board of Directors</i>	... 6
<i>Prohibition of the Board of Directors</i>	... 6
<i>Disciplinary Action Hearings</i>	... 7
<i>Continuing Education Credits</i>	... 8
<i>CCIC Meetings</i>	... 8

2005 Legislative Updates!

Legislation was passed in the 2005 Legislative Session making various changes to chapter 116 of Nevada Revised Statutes (NRS). The following is a summary of legislation that will have an impact on board members and those professions associated with common-interest communities.

Sec. 23-24—Requires any person who acts as a community manager to hold a Community Association Manager certificate as of October 1, 2007. The Commission for Common-Interest Communities was given the authority to establish the qualifications for issuance of the certificate by regulation.

Sec. 25-26—Establishes provisions that any person performing a reserve study in Nevada must be permitted as a Reserve Study Specialist by the Real Estate Division. This provision becomes effective July 1, 2007.

Sec. 27—Establishes provisions for reserve study permit holders and certificate holders regarding submittal of application to the Division.

Sec. 28-29—Sets forth provisions for the reinstatement of professional licenses, certificates and permits that were suspended by a court order. Allows the Division to investigate a matter pursuant to NRS 116 concerning any expiration, revocation or voluntary surrender by any agency or court of competent jurisdiction.

Sec. 30—Establishes that the Commission or any member acting on behalf of the Commission or on behalf of a hearing panel may issue subpoenas to require the attendance of witnesses and the production of books, records and other papers. Failure to comply with the subpoena may result in Commission filing with District Court for an order compelling compliance with the subpoena.

Sec. 31—Establishes provisions for monetary reimbursement for appearance at a hearing resulting from the issuance of a subpoena.

Sec. 32—Sets forth provisions for the Commission to appoint one or more hearing panels. The Commission may by regulation delegate to one or more hearing panels the power of the Commission to conduct hearings and other proceedings, determine violations, impose fines and penalties and take other disciplinary action authorized by the provisions of NRS 116.

Sec. 33—Establishes provisions which allow the Commission or hearing panel to conduct hearings by audio or video teleconference to one or more locations, provided that each location has the ability to hear and communicate with the other locations.

Sec. 34—Establishes provisions that the Commission may impose an administrative fine against any person who knowingly engages or offers to engage in activity without the required certificate or permit or without required authorization. The amount of the fine may not exceed any gain or economic benefit that the person derived from the violation or \$5,000, whichever amount is greater.

Sec. 35—Establishes provisions that if the Commission, hearing panel or Division has reasonable cause to believe, based on evidence, that a person has violated or is about to violate any provision of NRS 116, any regulation adopted or any order, decision, demand or requirement of the Commission, a hearing panel or the Division, the Commission or Division may bring action against that person in District Court.

(continued on pg 3)

COMMUNITY INSIGHTS

VOLUME II, ISSUE I

is an official publication of the

**STATE OF NEVADA
DEPARTMENT OF BUSINESS
AND INDUSTRY**

Sydney H. Wickliffe
Director

REAL ESTATE DIVISION

Gail J. Anderson
Administrator

Sonya Meriweather
Editor

LAS VEGAS OFFICE
2501 E. Sahara Ave., Ste. 202
Las Vegas, NV 89104-4137
(702) 486-4480

STATEWIDE TOLL FREE
1-(877) 829-9907
CICombudsman@red.state.nv.us

CARSON CITY OFFICE
788 Fairview Drive, Ste. 200
Carson City, NV 89701-5433
(775) 687-4280
<http://www.red.state.nv.us>

**COMMISSION for
COMMON-INTEREST COMMUNITIES**

Michael Buckley, Chairman
Attorney

Jan Porter, Vice Chairman
Homeowner Representative

Karen Brigg, Secretary
Property Manager

Diane Radunz, Commissioner
Certified Public Accountant

Shari O'Donnell, Commissioner
Developer Representative

Ombudsman for Common-Interest Communities to Retire in 2006

Eldon B. Hardy, the Ombudsman for Owners in Common-Interest Communities, is leaving his position in April 2006. Mr. Hardy has served as the Ombudsman for over four years and has seen the office grow in both responsibility and staff during this time.

On April 2, 2001, Eldon began his service as the Ombudsman. He and the staff work diligently in providing services as directed by the legislature to assist constituents living in homeowner associations in understanding the fundamentals of common-interest community living.

Under his direction, the office has implemented the Intervention Affidavit process, which incorporates the legislatively required certified mailing and a notarized affidavit. This process was created to assist parties residing in homeowner associations who have disputes and require a neutral third party to intervene. Also, the office facilitates and oversees the Alternative Dispute Resolution (ADR) program. The ADR program provides the opportunity for a person who has been aggrieved by another party to have either a mediator or arbitrator assist in the resolution process. Other educational services such as homeowner association seminars and brochures on specific topics are available through the office.

Prior to working for the state, Mr. Hardy was involved in civic matters and business associations. In 1962 he joined the North Las Vegas Rotary Club, in which he is still active and has twice served as president. He earned his Real Estate license and was the founding director of two small business associations, Nevada Association of Independent Businesses (NAIB) and Nevada Association of Automotive Service Professionals (NAASP), which he served as president for nine years.

For several years Mr. Hardy has promoted and been involved in the mediation and arbitration process. He is currently nationally certified as an arbitrator for the Council of Better Business Bureaus (BBB), receiving the Arbitrator of the Year award for 2002. He is also a certified arbitrator for the National Council for Dispute Settlement (NCDS) based in Dallas Texas.

We wish him well in his future endeavors!

The Administrator of the Real Estate Division is accepting letters of interest and professional resumes with 3 professional references for the position of Ombudsman at:

Real Estate Division
2501 East Sahara, Ste. 101
Las Vegas, NV 89104
Attn: Gail J. Anderson

(continued from pg 1)

Sec. 36-37—Defines a major component of the common elements as any component of the common elements, including any amenity, improvement, furnishing, fixture, finish, system or equipment, that may, within 30 years after original installation, require repair, replacement or restoration in excess of the routine annual maintenance.

Sec. 39—Requires a developer to deliver to the association, at the time of each close of escrow of a unit in a converted building, the amount of the converted building reserve deficit allocated to that unit.

Sec. 40—Under certain conditions, sets forth provisions allowing an association to petition District Court to waive the supermajority requirement for amending the declaration.

Sec. 41—Sets forth provisions that would allow unit's owners to install drought-tolerant landscaping. The association, per their governing documents, can require the drought-tolerant landscaping to be compatible with the style of the common-interest community.

Sec. 42—Establishes provisions that a unit owner is not required to secure or obtain approval from the association in order to rent or lease his unit. This provision does not prohibit the association from enforcing provisions provided in the declaration of the association which may prohibit or restrict the number of units that can be leased or rented.

Sec. 43—Establishes provisions for the Commission to adopt regulations prescribing the requirements for the preparation and presentation of the financial statements. The requirements must include the qualifications necessary for a person to prepare and present financial statements and the standards and format to be followed in preparing and presenting financial statements of the association.

Sec. 44—Sets forth provisions for auditing of the financial statement of the association:

- If the annual budget is less than \$75,000, the financial statement must be audited by an independent certified public accountant at least once every four fiscal years.
- If the annual budget is \$75,000 or more, but less than \$150,000, the financial statement must be audited by an independent certified public accountant at least once every four fiscal years and reviewed by an independent certified public accountant for every fiscal year when an audit is not conducted.
- If the annual budget is \$150,000 or more, the financial statement must be audited by an independent certified public accountant every fiscal year.

For any fiscal year that an audit is not performed, if within 180 days before the end of the fiscal year, 15% of the total number of voting members submit a written

request for an audit, the executive board must have the financial statement for that fiscal year audited by an independent certified public accountant. The Commission was given authority to adopt regulations prescribing the requirements for auditing or reviewing the financial statement and must include the qualifications necessary for a person to audit or review financial statements and the standards and format to be followed in auditing or review financial statements.

Sec. 45—Sets forth provisions regarding the right-of-way of roads, streets, alleys or any thoroughfare which is accepted by the State or a local government for public use. The provisions do not preclude the association from adopting rules that reasonably restrict parking or storage of recreational vehicles, watercraft, trailers or commercial vehicles in the association to the extent authorized by law.

Sec. 54—Establish provisions that landscape maintenance associations and certain other past exempt associations must register with Ombudsman's office and pay the unit fee. The Commission was given the authority to adopt regulations for determining whether an association, a limited-purpose association, or a common-interest community satisfies the criteria for an exemption or limited exemption from any provisions of NRS 116.

Sec. 59—Changes the total amount of a fine that can be assessed for a violation. Defines the requirements to foreclose for health, safety and welfare issues as follows:

- If the violation poses an imminent threat causing adverse effect on the health, safety and welfare of the units' owner or residents, the amount of the fine must be appropriate for the severity of the violation and determined by the executive board in accordance with the governing documents.
- If the violation does not pose an imminent threat of causing substantial adverse effect on the health, safety or welfare of the units' owner or residents, the amount of the fine must be appropriate for the severity of the violation and determined by the executive board in accordance with the governing documents, but the amount of the fine must not exceed \$100 for each violation or the total amount of \$1,000, whichever is less.

Sec. 60—Further defines the requirements to serve on the board of directors. A person is not required to be an owner unless governing documents state otherwise, providing the majority members are unit owners. A candidate for the board must make a good faith effort to disclose information that would appear to be a conflict of interest. Also, a candidate must disclose whether they are a member in good standing.

Sec. 61—Establishes that 35% of the total number of voting members of the association and at least a majority of all votes cast in the removal election may remove a board member.

Sec. 62—Adds provisions that the developer must include an audited financial statement for each fiscal year and any ancillary period from the date of inception of the association to the date the period of the declarant's control ends. The financial statement must fairly and accurately report the association's financial position.

Sec. 64—Further defines that every 90 days the executive board, at a minimum, must review financial information at one of its meetings, including:

- A current year-to-date financial statement
- A current year-to-date schedule of revenues and expenses for the operating account and the reserve account, compared to the budget for those accounts
- A current reconciliation of the operating account
- A current reconciliation of the reserve account
- The latest account statement prepared by the financial institution in which the accounts of the association are maintained
- The current status of any civil action or claim submitted to arbitration or mediation in which the association is a party

Sec. 65—Changes were made to the hearing process and unit owners' right to have the hearing venue changed. The executive board will conduct meetings on an alleged violation in executive session unless the person who is sanctioned for the alleged violation requests in writing that an open hearing be conducted by the executive board.

Sec. 66—Further defines that, unless the declaration imposes more stringent standards, the budget must include a budget for the daily operation of the association and a budget for the reserves.

Sec. 69—Establishes provisions that if an association is subject to the governing documents of a master association, the master association is responsible for payment of the Ombudsman's fees for each unit in the association unless the governing documents of the master association indicate otherwise. The provision does not negate any sub-association's responsibility from its ultimate responsibility to pay the fees required, if fees are not paid by the master association. An administrative penalty may be imposed by the Real Estate Division against any sub-association or master association for failure to pay the required fees within the timeframe established by the Division.

Sec. 70—Expands on the requirements of the association in notification to a unit owner of a notice of default. Also requires the delivery of a copy of the deed to the Ombudsman within 30 days after the deed is delivered to the purchaser, or his successor or assignee.

Sec. 76—Further defines the documents that must be included in a resale package and establishes that the purchaser of a unit may, by written notice, cancel the

contract of purchase until midnight of the fifth calendar day following the date of receipt of the resale package, and the contract for purchase must contain a provision to that effect.

To read SB 325 in its entirety, you can log onto the Legislative Counsel Bureau's web site at:

http://www.leg.state.nv.us/73rd/bills/SB/SB325_EN.pdf

Permit Required for Reserve Study Specialist, Effective July 1, 2007

Effective July 1, 2007 Senate Bill (SB) 325, Sec. 25, indicates that a person shall not act as a reserve study specialist unless the person holds a permit issued by the Real Estate Division.

SB 325, Sec. 25, reads as follows:

The Commission is charged with adopting regulations to provide for the issuance by the Division of permits to reserve study specialist. The regulations:

- Must establish the qualifications for the issuance of such a permit, including, without limitation, the education and experience required to obtain such a permit.
- May require applicants to pass an examination in order to obtain a permit. If the regulations require such an examination, the Commission shall by regulation establish fees to pay the costs of the examination, including any costs necessary for the administration of the examination.
- May require an investigation of an applicant's background. If the regulations require such an investigation, the Commission shall by regulation establish fees to pay the costs of the investigation.
- Must establish the grounds for initiating disciplinary action against a person to whom a permit has been issued, including, without limitation, the grounds for placing conditions, limitations or restrictions on a permit and for the suspension or revocation of a permit.
- Must establish rules of practice and procedure for conducting disciplinary hearings.
- The Division may collect a fee for the issuance of a permit in an amount not to exceed the administrative costs of issuing the permit.

As of October 1, 2005, the Commission for Common-Interest Community was given the authority to begin establishing the qualifications for issuance of the permit. Discussion regarding the qualifications will take place during scheduled workshops. Workshops will be noticed on the Division's web site at www.red.state.nv.us; click on Commissions, Common-Interest Communities, Meetings & Agendas.

Community Association Manager Responsibilities

With the adoption of LCB File No. R-129-04, effective April 14, 2005, Nevada Administrative Code (NAC) 116.300, the Commission for Common-Interest Communities established the responsibilities of a community manager. Those responsibilities are as listed:

1. Comply with the lawful provisions of the governing documents of each client;
2. Maintain an inventory of all records of each client;
3. Keep informed of new developments in the management of a common-interest community through continuing education, including, without limitation, new developments in law, insurance coverage and accounting principles;
4. Advise a client to obtain advice from an expert relating to matters that are beyond the expertise of the community manager;
5. Under the direction of a client, uniformly enforce the provisions of the governing documents of the association;
6. At all times ensure that the financial transactions of a client are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurance in the reliability of the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;
7. Prepare or cause to be prepared interim and annual financial statements that will allow the Division, a client, the units' owners and the accountant or auditor to determine whether the financial position of a client is fairly presented in accordance with generally accepted accounting principles as set forth in the *Common Interest Realty Associations – AICPA Audit and Accounting Guide*, as adopted by NAC 116.410;
8. Make the financial records of an association available for inspection by the Real Estate Division in accordance with the applicable laws of this State;
9. Cooperate with the Division in resolving complaints filed with the Division;
10. Upon written request, make the financial records of an association available to the units' owners during regular business hours for inspection at a reasonable convenient location, which must be within 60 miles of the physical location of the common-interest community and provide records in accordance with the applicable laws of this State;
11. Deposit all money of an association that is in the possession or control of the community manager in a federally insured financial institution authorized to do business in this State;
12. Recommend in writing to each client that the association register with the Division, maintain its registration and file all papers with the Division and the Secretary of State as required by law;
13. Comply with the directions of a client, unless the directions conflict with the governing documents of the association, this chapter or other applicable laws of this State;
14. Recommend in writing to each client that the association be in compliance with all applicable federal, state and local laws and the governing documents of the association;
15. Obtain, when practicable, at least three bids for any capital improvement project for the association; and
16. Fairly enforce the collection policies of a client and comply with all applicable federal, state and local laws relating to the collection of debt.

As used in this section, "regular business hours" means Monday through Friday, 9 a.m. to 5 p.m., excluding state and federal holidays.

**The AICPA Audit and Accounting Guide,
Common Interest Realty Associations can be
ordered by calling 1-888-777-7077, by fax at
1-800-362-4066 or on the web at
www.cpa2biz.com**

Fiduciary Duty of the Executive Board of Directors

The Board of Directors is the elected body that is charged with managing the business of the association and must uphold their fiduciary duty. Fiduciary duty is the duty to act for someone else's benefit, while subordinating one's personal interest to that of the other person.

To assist board members in upholding their fiduciary duties, board members are governed under chapter 116 of Nevada law. As indicated in Nevada Administrative Code (NAC) 116.400, board members have the responsibility to:

1. Comply with all applicable federal, state and local laws and the governing documents of the association;
2. Uniformly enforce the provisions of the governing documents of the association;
3. Ensure that meetings of the executive board are held with such frequency as to properly and efficiently address the affairs of the association;
4. Keep informed of new developments in the management of a common-interest community through educational courses;
5. Ensure that the executive board obtains, when practicable, at least three bids from reputable service providers who possess the proper licensing for any service used by the association;
6. Ensure that the executive board consults with the appropriate professionals as necessary before making major decisions affecting the association;
7. Deposit all money of an association in a federally insured financial institution authorized to do business in this State; and
8. If the association does not employ a community manager:
 - Maintain an inventory of all records of the association;
 - At all times ensure that the financial transactions of the association are current, accurate and properly documented and that there are established policies and procedures surrounding the financial transactions that are designed to provide reasonable assurance in the reliability of

the financial reporting, including, without limitation, proper maintenance of accounting records, documentation of the authorization for receipts and disbursements, verification of the integrity of the data used in business decisions, facilitation of fraud detection and prevention, and compliance with the applicable laws and regulations governing financial records;

- Prepare or cause to be prepared interim and annual financial statements that will allow the Division, a client, the units' owners and the accountant or auditor to determine whether the financial position of the association is fairly presented in accordance with generally accepted accounting principles as set forth in the *Common Interest Realty Associations – AICPA Audit and Accounting Guide*, as adopted by NAC 116.410;
- Make the financial records of the association available for inspection by the Division in accordance with the applicable laws of this State;
- Cooperate with the Division in resolving complaints filed with the Division;
- Upon written request, make the financial records of the association available to the units' owners during regular business hours for inspection at a reasonably convenient location which must be within 60 miles of the physical location of the common-interest community and shall provide copies of such records in accordance with the applicable laws of this State; and
- Fairly enforce the collection policies of the association and comply with all applicable federal, state and local laws relating to the collection of debt.

Prohibitions of the Executive Board Of Directors

Just as the provisions of law include what a member of the board can do, it also includes what a member of the board cannot do. Members of the executive board are prohibited from certain acts as indicated in NAC 116.405. In performing their duties, board members shall not:

1. Act outside the scope of the authority granted in the governing documents;

2. Act for reasons of self-interest, gain, prejudice or revenge;
3. Commit an act or omission which amounts to incompetence, negligence or gross negligence;
4. Except as otherwise required by law or court order, disclose confidential information relating to a unit's owner, a member of the executive board or an officer, employee or authorized agent of the association unless the disclosure is consented to by the person to whom the information relates; or
5. Impedes or otherwise interferes with an investigation of the Division by:
 - Failing to comply with a request by the Division to provide documents;
 - Supplying false or misleading information to an investigator, auditor or any other officer or agent of the Division; or
 - Concealing any facts or documents relating to the business of the association.

Simply stated, as a board member, the decisions you make affect the community and every member within the community. Understand your responsibilities and exercise your authority wisely.

Disciplinary Action Hearings by the Commission for Common-Interest Communities

JOSEPH BITSKY—Unlicensed activity

Respondent was present at the Hearing on May 17, 2005.

Allegations: In order to provide for or otherwise engage in the management of a common-interest community, a person must hold a permit to engage in property management issued pursuant to the provisions of Chapter 645 of NRS or a certificate to engage in the management of a common-interest community issued by the Division pursuant to the provisions of Chapter 116 of NRS.

Respondent does not now and has never held a permit to engage in property management issued pursuant to the provisions of Chapter 645 of NRS.

Per NRS 116.023, a community manager is defined as “a person who provides for or otherwise engages in the management of a common-interest commu-

nity.”

Per NRS 116.061, management of a common-interest community means “the physical, administrative or financial maintenance and management of a common-interest community, or the supervision of those activities, for a fee, commission or other valuable consideration.”

Respondent does not now and has never held a certificate to engage in management of a common-interest community issued by the Division pursuant to the provisions of Chapter 116 of NRS.

From January 1, 2004, though, approximately, January 4, 2005, Respondent provided for or otherwise engaged in the management of the common-interest community of the Parkway Villas Owners Association (the “Association”).

In his capacity as the community manager of the Association, Respondent attended meetings of the Association and of the Association’s executive board and transcribed tapes of those meetings.

In his capacity as the community manager of the Association, Respondent maintained the Association’s records, including with respect to the payment of assessments and dues, gate cards, receipts, and financial information.

In his capacity as the community manager of the Association, Respondent negotiated and entered into contracts on behalf of the Association.

In his capacity as the community manager of the Association, Respondent signed and issued “Notice[s] to Access Fees/Fines” and a tow-away notice for alleged violations of the Association’s Covenants, Conditions and Restrictions (CC&R’s).

Respondent was paid by the Association for his services as the community manager of the Association between January 1, 2004, and, approximately, January 4, 2005.

Common-Interest Communities Commission actions are not published in this newsletter until the 30-day period for filing for Judicial Review has expired, or if an appeal is taken and the disciplinary action is stayed, until the stay is dissolved.

Conclusion: Respondent was found guilty of violating NRS 116.700 (1) (2003) by providing for or otherwise engaging in the management of a common-interest community, specifically the Parkway Vil-

las Owners Association, while not holding a permit or certificate.

Order: Respondent was ordered to pay a fine to the Division in the amount of eight thousand dollars (\$8,000.00) within six (6) months of the effective date of the decision.

**Continuing Education Credits for
Community Association Managers Attending
CICC Meetings**

Community Association Managers can receive continuing education (CE) credits for attending meetings of the Commission for Common-Interest Communities.

Adopted regulation R129-04, Section 44, reads as follows:

- 1) The Commission will grant credit for continuing education, not to exceed 6 hours during a certification period, to a holder of a certificate for attending a meeting of the Commission if:
 - a) The meeting of the Commission for which credit for continuing education is being sought is not a meeting in which the holder of a certificate was participating in or otherwise affiliated with a specific disciplinary hearing;
 - b) The meeting of the Commission for which credit for continuing education is being sought lasts at least three (3) hours; and
 - c) The Commission certifies, for the purposes of providing credit for continuing education, the attendance of the holder of a certificate at the meeting.

- 2) If a holder of a certificate attends only part of a meeting of the Commission, the Division may determine the number of hours of credit, if any, that the holder of a certificate may receive for credit for continuing education pursuant to this section.

**Commission for Common-Interest
Communities Scheduled Meetings in 2006**

<i>Month</i>	<i>Date</i>	<i>Meeting</i>	<i>Location</i>
January	17	Workshop	South
	18, 19 & 20	Meeting	South
March	28, 29 & 30	Meeting	TBD
May	16, 17 & 18	Meeting	TBD
August	22, 23 & 24	Meeting	TBD
October	17,18 &19	Meeting	TBD
November	15	Meeting	TBD

A copy of the agenda can be obtained by logging onto the Division's web site at www.red.state.nv.us; click on Commissions, Common-Interest Communities, Agendas & Meetings.

PRRST STD
 U.S. POSTAGE
 PAID
 Carson City, NV 89701
 PERMIT #15

3820
 State of Nevada
 Department of Business & Industry
 Real Estate Division
 2501 E. Sahara Avenue, Suite 104
 Las Vegas, NV 89104-4137