

COMMUNITY INSIGHTS

VOLUME IV, ISSUE I

Department of Business and Industry, Real Estate Division

Fall 2007

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>Commissioner's Corner</i> | ... 2 |
| <i>Division to enforce HOA fees</i> | ... 3 |
| <i>Administrative Law Judge Decisions</i> | ... 4 |
| <i>Alternative Dispute Resolution claims</i> | ... 6 |
| <i>Commissioner Spotlight</i> | ... 9 |
| <i>Remembering Eldon Hardy</i> | ... 9 |
| <i>Free seminars</i> | .. 10 |
| <i>Compliance acts in elections</i> | .. 10 |
| <i>Division announces new</i> | .. 10 |
| <i>Disciplinary Action Hearings</i> | .. 11 |

From the Ombudsman's Desk

Conferencing Program assists HOA residents with community disputes

By **LINDSAY WAITE**
Ombudsman

Going into my second year as ombudsman, I am pleased to report that the Conferencing Program, which was established right after I began, has helped to resolve many common concerns within homeowner associations.

There are some peculiarities to the Conferencing Program, so allow me to explain briefly how it works. People who are concerned about violations of NRS 116 - Common-Interest Ownership, and related laws and regulations, can file an Intervention Affidavit with the Office of the Ombudsman using Form 530, which is on the Nevada Real Estate Division Web site, www.red.state.nv.us.

If the matter concerns a community manager or a management company, not the association itself or its members, Form 514 should be used instead. While this office processes such complaints, they do not go through the Conferencing Program, but are sent on for possible investigation.

I review the Intervention Affidavit and prepare a letter that summarizes the issues, then send the letter to both sides in the case. Usually the person charging alleged violations of NRS 116 are homeowners, but on occasion I receive affidavits from boards and



even community managers.

I invite the homeowner and board president (or someone designated by the board president) to attend a conference to discuss the issues and determine if there is a possible resolution. Sometimes the community manager also will attend.

During these conferences, each side may speak about his or her concerns. My goal is to assist the parties in communicating in a civil fashion, without interrupting the other side, and to focus on finding common ground.

I give a lot of credit to those who are willing to attend these meetings because when they do approximately 40 percent to 50 percent of the cases are resolved to the satisfaction of both sides. Usually the resolution requires both sides to compromise to some extent, but I am pleased that often the result is better communication among the residents, boards and managers.

There have been more than 100 conferences in the past year, either in Las Vegas or Carson City. The number of Intervention Affidavits filed has more than doubled in that time, so it is taking a bit longer to review the files and

See OMBUDSMAN on Page 3

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Commissioner's Corner

CIC Commission comes of age amid changes



By **MICHAEL E. BUCKLEY**
Commission Chairman

Last fall I began my newsletter reflecting on the many changes affecting the Commission on Common-Interest Communities. A year later, my first thoughts are exactly the same.

Each year, however, brings a different kind of change, and this past year I believe the commission has come of age. It is no longer the new kid on the block. The commission has (and will have) new commissioners. Marilyn Brainard, who succeeded Jan Porter as the homeowner representative last November, has completed her first full year; while September marked the end of Karen Brigg's term as the community management representative.

In addition, Gail Anderson, administrator of the Real Estate Division, and Kateri Cavin, commission legal counsel, both of whom were instrumental in establishing the commission on sound footing, have moved on. While Deonne Contine has ably stepped in as commission counsel, Gail's replacement is just getting started. Ann M. McDermott became the division's new administrator Oct. 1. Meanwhile, we await Karen's successor.

New people bring different backgrounds, ideas and energy to the commission. In the process of integrating the new comes a better appreciation and understanding of what the commission is all about. New builds on old.

A year ago, we were reminded once again that the slow-moving wheels of the commission's hearing process just don't resolve cases quickly enough. As a result, with the assistance of Gail Anderson and NRED counsel Nancy Savage, in early 2007 the commission instituted the Administrative Law Judge program. Although ALJ procedures need some fine-tuning, the program is doing what it set out to do: resolve cases as promptly as possible. Coupled with the Conference Program instituted by Ombudsman Lindsay Waite, resolution of homeowner disputes has taken a marked turn for the better over the past year. I speak for all the commissioners in applauding the efforts of the ALJs and the ombudsman.

The commission met 14 times in 2007. As is typical in a

Nevada legislative year, the focus has been on legislation. The commission took positions on at least 12 bills. The primary one, AB 396, which contained many provisions supported as well as opposed by the commission, was vetoed by Gov. Jim Gibbons.

Following the session at its June meeting, the commission considered the issues addressed in A.B. 396, and recognized once again its role as a forum where CIC issues can be given adequate public consideration. We look forward to a discussion of the commission's first response in the form of several new regulations.

In September, we discussed condominium hotels, which have been added to the commission's jurisdiction. Most of AB 431 takes effect on Jan. 1, 2008. Meantime, the newly named Commission for Common-Interest Communities and Condominium Hotels will propose regulations over this burgeoning new (at least in Nevada) industry. We solicit input from all concerned parties.

The commission, however, was not all about legislation in 2007. Two Advisory Opinions were approved in January: Opinion 2007-01 deals with delivery of the resale package to a buyer's agent, and Opinion 2007-02

deals with a board's requirement that a homeowner pay in advance for records review.

Additional advisory opinions are planned. In September, the division and commission concluded their public hearings on Regulation R145-06, governing reserve study preparers. The next steps for this regulation will be the preparation of a final draft by the Legislative Counsel Bureau and an adoption hearing.

Looking ahead, we still see a shortage of manager education. Despite reports of a housing slowdown, common-interest communities in Nevada continued to open and grow. In August 2006, the state had 2,773 registered associations with 396,838 units. This past June, the tallies had grown to 2,962 associations (+ 6.8 percent) with 428,162 units (+ 7.9 percent).

We tend to forget throughout hearings focused on the adoption of laws and regulations, or others addressing violations, that the commission rarely contends with well-managed associations. Solutions for common-interest community problems come best through education, communication and good management. As we look to 2008, let us all rededicate ourselves to these goals.

Division cautions associations: Register, pay dues now

The state of Nevada requires all associations to register annually with the Office of the Ombudsman, submitting a \$3 fee per door in accordance with Nevada Revised Statutes 116.31155. Registration and payment is due the last day of the month in which the association incorporated with the secretary of state.

NRS 116.31155(4) permits the Real Estate Division to impose a penalty against an association or master association that fails to pay its registration fees within the time period established by the division. The pen-

alty for each violation is 10 percent of the amount owed or \$500, whichever is less. Interest on unpaid fees accrues at a rate set forth by NRS 99.040 from the date the fees are due until they are paid in full.

The administrator intends to implement this provision on Jan. 1, 2008. Associations will need to review their financial records to determine whether or not they are current on their fees. The division will send out a letter to the last address listed for each association, providing a 30-day notice of the enforcement of this statute.

Ombudsman

Continued from Page 1

schedule the potential conferences.

Since there are almost half a million people living in Nevada HOAs, and almost 3,000 associations, one of the main goals of this office is to increase public understanding of HOA issues. To that end, the new education and information officer, Nick Haley, and I plan to begin teaching some of the subject areas later this fall.

Currently, seminars in Basic Skills for Board Members

and Considering Professional Management for a Common-Interest Community are held throughout the state, presented by Community Association Solutions. Three more classes are expected to begin in January 2008: Reserve Studies, Financial Management of a Common-Interest Community, and Maintenance and Risk Management. Check our Web site for dates and times.

Finally, we plan to offer on-demand video from our Web site next year, allowing us to deliver information in an efficient, interesting way to help residents and boards understand their rights and responsibilities.

2007 Administrative Law Judge decisions

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.

A respondent's certificate is automatically suspended for failure to comply with a commission order, and the division may institute debt collection proceedings to recover fines and costs.

The division does not publish names of persons whose certificate applications are denied.

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. Stipulations by administrative law judges are presented to the commission for review and acceptance.

Southern Terrace Homeowners Association Case No. IS-05-1173 April 2007

Findings of Fact: Lou Castro is an owner within the Southern Terrace Homeowners Association. The association ticketed his vehicle three times for violation of the parking rules, which limit where a resident may park. The board did not include notice of a right to a hearing. Following the three tickets, the vehicle was towed. Mr. Castro paid \$193.50 to recover his vehicle.

Conclusions of Law: The association violated NRS 116.31031 and its own internal procedural protections by failing to provide notice letters to Mr. Castro after the first and second tickets to advise him of his right to a hearing, as well as failing to set a hearing after the second ticket as provided in the form of ticket used by the association.

Decision: Southern Terrace Homeowners Association was ordered to reimburse Mr. Castro \$193.50 for his towing costs.

Tropicana Villas Homeowners Association Case No. IS-05-1150 April 2007

Findings of Fact: Susan Foy, a member of the Tropicana Villas Homeowners Association, had an inspection performed on her property at the time of move-in. The inspection showed no defects in the roof over her condominium. Four years later, leaks appeared following a rainy day. Ms. Foy contacted the

association to request repairs, both by telephone and in writing. She later contacted the Ombudsman's Office for intervention. Subsequently, the association sent a roofer to examine the property, however leaking continued, causing damage within the unit.

Conclusions of Law: The association violated its CC&Rs by failing to repair the leaking problem within a reasonable time frame.

Decision: The association was ordered to repair the roof so it no longer leaks and to replace all areas of Ms. Foy's roof that were damaged due to leakage.

Cottonwoods Owners Association, Case No. IS-05-1149 May 2007

Findings of Fact: On Aug. 5, 2004, Barbara D. Rhoads attended a board meeting of the Cottonwoods Owners Association, where she informed association president Tim Hafen of potential violations of NRS 116 by the board. At the Nov. 4, 2004, meeting, the board began to implement the changes Ms. Rhoads discussed, but refused to discuss them in open forum, referring concerns to legal counsel. Because Ms. Rhoads received no response about the alleged violations, she contacted the Ombudsman's Office. Allegations included: (1) hiring a board member as manager, then raising her compensation; (2a) not placing her raise on a board meeting agenda and (2b) not noticing the meeting properly; (3) illegally expanding the number of board members; (4) keeping insufficient minutes; (5) illegally meeting to take action on

2007 Administrative Law Judge decisions

contracts; (6) failing to alternate terms in office; (7) failing to certify in writing that the board members have read and understand the governing documents; (8) failing to provide proper notice for a meeting; and (9) failing to place complaints on the agenda.

Conclusions of Law: The board resolved alleged violation 1, as the manager is no longer on the board. As for alleged violation 2, the board did not place the raise on the agenda as required by law, but did not improperly notice the meeting, as the provision cited pertained to executive sessions. The board resolved alleged violation 3 to comply with law. The fourth alleged violation was not substantiated, as the law requires the substance of an owner's remarks be included upon request. Alleged violation 5 could not be substantiated by evidence and so the association was found in compliance. The board came into compliance regarding alleged violation 6. The board was found to be unaware of the requirements of violation 7, but resolved it upon discovery to comply with the law. Alleged violations 8 and 9 cited laws that did not pertain to executive sessions, so no violation occurred.

Sandpiper Golf Villas Case No. IS-05-1179-AMENDED May 2007

Findings of Fact: During the annual homeowners meeting in 2004, four members were elected out of a five-member board. When the association was first established, it provided for three members to serve a two-year term and two to serve a one-year term, and all subsequent elections to be for two-year terms. Due to resignations by a board member and community manager, the association changed its election schedule in 2004 and, following a complaint by homeowner Roberta Shulman, failed to correct the problem during the next election cycle. Ms. Shulman noted the problem in 2005 when ballots were sent out for one office. When she told the management company, they sent out an addendum to the ballot, noting the resignation of one board member, Wally Askew, to comply with the bylaws and included a statement from him. The other candidates statements were included only on the previous mailing. Ms. Shulman noted that Mr. Askew should not resign since he was re-elected the previous year and that the member who replaced the board member who resigned, creating the election irregularity, should be the one to face re-election.

Conclusions of Law: The bylaws of the association require the election of board members with staggered terms — two members one year and three the next. The board improperly filled a vacancy with an election in 2004, rather than an appointment to complete his term.

Decision: The association was fined \$1,000. The amount was amended because Sandpiper was not required to pay the costs associated with the Administrative Law Judge as required by the initial decision. Sandpiper must also pay the division \$100.

Greenbriar Townhouse Homeowners Association Case No. IS-07-1413 August 2007

Findings of Fact: Greenbriar Townhouse Homeowners Association has been, at times, a self-managed association. Its CC&Rs require an annual accounting prepared and certified by a certified public accountant, which the association failed to perform in 2003 and 2004. When the association's board of directors discovered this in 2005, it ordered an audit going back to 2003. A lack of records delayed completion of the work, until their surprise discovery on Aug. 14, 2003 in a store room on association property. The association believes the newly uncovered records should allow accountants to finish their audits completely, although certain board members believe there may continue to be gaps in the records.

Conclusions of Law: Greenbriar Townhouse violated NRS 116.31175 and NRS 116.31177 as well as its own CC&Rs by failing to provide for an annual accounting performed and certified by a certified public accountant, failing to maintain its records in such a manner that they are readily accessible by members and the association, and failing to conduct a due diligence search for its records, which after two years were discovered just 15 feet from where the association holds its meetings.

Decision: Greenbriar is ordered to maintain its records properly. Further, the association must make a thorough review of any and all records discovered in the store room, and establish internal, written procedures for the permanent storage of its records.

Alternative Dispute Resolution claims

| DATE OPENED | DATE CLOSED | CLAIM # | NB/ARB | B/ARB | MED | SET-TLED | DIS-MISSED | FILED BY | NATURE OF CLAIM | DISPOSITION/ COSTS |
|-------------|-------------|---------|--------|-------|-----|----------|------------|-------------|--|--|
| 08/10/04 | 07/06/06 | 04-58 | | | | 1 | | Homeowner | Improper and excessive fines, attorney's fees and legal costs due to retaliatory action. | Settlement agreement. \$2,500 awarded to Claimant. Respondent is responsible for \$2,200 in Arbitrator fees. |
| 01/24/06 | 07/06/06 | 06-42 | | | | 1 | | Homeowner | Subjective enforcement of CC & Rs | Settlement agreement. \$150 Arbitrator fee due. |
| 12/15/05 | 07/10/06 | 06-31 | | | | 1 | | Homeowner | Homeowner disputing fines assessed by HOA. | Settlement agreement. Respondent will reimburse Claimant no more than \$15,000. Each side owes Arbitrator \$1148.32. |
| 03/16/06 | 07/12/06 | 06-58 | | | | 1 | | Homeowner | Selective enforcement of CC & Rs. | Settlement agreement. \$50 filing fee by Claimant. |
| 05/09/06 | 07/26/06 | 06-69 | | | | 1 | | Homeowner | Selective enforcement of CC & Rs. | Dismissed by Division. \$50 filing fee by Claimant. |
| 05/15/06 | 07/26/06 | 06-72 | | | | 1 | | Homeowner | Refusal to comply with previous ADR decision: 03-81 | Dismissed by Division. \$50 filing fee by Claimant. |
| 03/21/06 | 07/26/06 | 06-62 | 1 | | | | | Homeowner | Refusal to maintain landscape. | Arbitration found in favor of Claimant. Respondent ordered to pay \$3876.50 in fines, interest, Arbitrator, filing, Attorney, and late fees. |
| 06/13/05 | 07/27/06 | 05-33 | | | | 1 | | Homeowner | Unapproved home improvement construction. | Settlement agreement Each side paid \$50 filing fee and \$750 arbitration deposit. Each side will receive \$268.75 credit from Arbitrator. |
| 03/22/06 | 07/31/06 | 06-63 | | | | 1 | | Homeowner | Failure to repair home caused by water leak from pipe in common area. | Withdrawn by Claimant. \$100 Arbitrator fee paid by both sides along with \$50 filing fee by both sides. |
| 02/22/06 | 08/01/06 | 06-53 | 1 | | | | | Homeowner | Failure of Association to perform fiduciary duties. | Arbitration found in favor of Claimant. Respondent to reimburse \$100 for fines paid. \$500 Arbitrator fees. \$50 ADR filing fee. \$3025 in attorney's fees. |
| 03/19/04 | 08/02/06 | 04-23 | | 1 | | | | Homeowner | Property damage to driveway caused by tree maintained by Association. | Arbitration found in favor of Respondent. Each side to pay 1/2 Arbitrator's fee totaling \$2,695. \$250 deposit was made by both sides. Claimant to pay Respondent \$6481 in attorney's fees. |
| 03/19/04 | 08/02/06 | 06-43 | | 1 | | | | Homeowner | Increased Assessments | Arbitration found in favor of Respondent. Claimant is to reimburse Respondent \$50 filing fee, \$609.15 Arbitrator's fees and costs, and \$1,000 Attorney's fees. |
| 02/08/06 | 08/07/06 | 06-46 | | 1 | | | | Homeowner | Increased Assessments | Arbitration found in favor of Respondent. Claimant is to reimburse Respondent \$50 filing fee, \$524.16 Arbitrator's fees and costs, and \$1,000 Attorney's fees. |
| 03/10/06 | 08/15/06 | 06-57 | | 1 | | | | Homeowner | Association not enforcing CC & Rs. | Arbitration found in favor of Respondent. Claimant order to pay \$481 Arbitrator fees (\$300.00 for Arbitrator \$50 filing fee. \$131.00 in additional costs. For Respondent's Arbitration fees.) \$638.98 Arbitrator fees (\$300 for Arbitrator \$50 filing fee \$288.98 in additional costs. For Respondent.) Claimant is also to reimburse \$55,500 for Respondent's attorney fees. |
| 03/20/06 | 08/29/06 | 06-61 | | 1 | | | | Association | Claimant built wall without prior permission. | Arbitration found in favor of Claimant. Respondent to remove wall. However, claimant must forgive all fines levied against Claimant. Each side to pay for their own attorney's fees. Each side to pay Arbitrator: \$722.08 that includes previously paid deposit of \$500 (Each side paid \$250) |

| DATE OPEN | DATE CLOSED | CLAIM # | NB/AR B | B/ARB | MED | SET-TLED | DIS-MISSED | FILED BY | NATURE OF CLAIM | DISPOSITION/ COSTS |
|-----------|-------------|---------|---------|-------|-----|----------|------------|-------------|--|--|
| 06/01/06 | 09/08/06 | 06-76 | 1 | | | | | Homeowner | Association not enforcing CC & Rs | Arbitration found in favor of Claimant. Respondent ordered to pay \$493.53 for Arbitrator fees. |
| 11/17/05 | 09/08/06 | 06-27 | 1 | | | | | Association | Claimant built structure without prior written approval. | Arbitration found in favor of Claimant. Attorney's fees: \$10,172.61 Claimant pays \$2543.15, Respondent pays \$7629.46 Arbitrator fees: \$7136.92. Each side pays 1/2. |
| 05/05/06 | 09/12/06 | 06-68 | | 1 | | | | Homeowner | Board acting outside its authority. | Arbitration found in favor of Respondent. Claimant to reimburse Respondent \$50,000 filing fee and \$3750,00 attorney fees. Each side paid Arbitrator \$300,00 |
| 12/19/05 | 09/13/06 | 06-33 | | | | 1 | | Homeowner | Claimant disputing fines. | Settlement agreement. Respondent to pay Claimant \$162.42. Each side pays Arbitrator total of \$517.08. |
| 04/07/06 | 09/29/06 | 06-66 | | | | 1 | | Homeowner | Claimant states that Association denied Architectural Change Request that should have been approved. | Settlement agreement. Each side pays for their own attorney and Arbitrator fees. Each side gave \$946.32 deposit for Arbitrator fees. |
| 02/10/06 | 10/04/06 | 06-48 | | | | 1 | | Association | Respondent began major landscape project on Claimant property without proper authorization. | Settlement agreement. Respondent pays Claimant \$3000. Each side owes Arbitrator \$555.00. Each side pays for their own attorney's fees. |
| 07/28/06 | 10/04/06 | 07-11 | | | | | 1 | Homeowner | Property rental violating CC & Rs. | Dismissed by Division. \$50 filing fee by Claimant. |
| 11/15/05 | 10/04/06 | 06-26 | 1 | | | | | Homeowner | Dispute over installation of a basketball hoop in back yard. | Arbitration found in favor of Claimant. Each side paid Arbitrator \$300. |
| 08/08/06 | 10/20/06 | 07-14 | | | | | 1 | Association | Failure to maintain landscape. | Dismissed by Division. \$50 filing fee by Claimant. |
| 08/08/06 | 10/20/06 | 07-17 | | | | | 1 | Association | Failure to maintain landscape. | Dismissed by Division. \$50 filing fee by Claimant. |
| 08/08/06 | 10/20/06 | 07-18 | | | | | 1 | Association | Failure to maintain landscape. | Dismissed by Division. \$50 filing fee by Claimant. |
| 02/10/06 | 10/23/06 | 06-47 | | | | 1 | | Homeowner | No permission to build fencing around property. | Settlement agreement. Claimant pays Respondent \$500.00. Each side paid Arbitrator \$495. Each side pays their own attorney's fees. |
| 02/05/03 | 10/23/06 | 03-16 | | | | | 1 | Homeowner | Association enforcing age restriction after home closed escrow. | Dismissed by Arbitrator. Each side responsible for their own attorney's fees. Claimant paid Arbitrator \$1291.67. Respondents paid total of \$1520.84. |
| 10/31/05 | 10/25/06 | 06-24 | 1 | | | | | Homeowner | Association Board not following CC & Rs. | Arbitration found in favor of Claimants. Respondents ordered to pay Claimants \$16401.10 in attorney's costs and fees. \$1494.58 in Arbitrator's costs and fees. |
| 08/08/06 | 10/31/06 | 07-13 | | | | | 1 | Association | Failure to maintain landscape. | Dismissed by Division. \$50 filing fee by Claimant. |
| 08/08/06 | 10/31/06 | 07-15 | | | | | 1 | Association | Failure to maintain landscape. | Dismissed by Division. \$50 filing fee by Claimant. |
| 02/16/06 | 10/31/06 | 06-51 | 1 | | | | | Homeowner | Failure to maintain landscape. | Arbitration found in favor of Respondent. Arbitrator fees: \$3487.04 for each side. Claimant to reimburse Respondent: \$6782.92. \$4000 in arbitration costs and \$2782.92 in Arbitrator's fees. |

Alternative Dispute Resolution claims

| DATE OPEN | DATE CLOSED | CLAIM # | NB/ARB | B/ARB | MED | SET-TLED | DIS-MISSED | FILED BY | NATURE OF CLAIM | DISPOSITION/ COSTS |
|------------|-------------|---------|--------|-------|-----|----------|------------|-------------|---|---|
| 05/22/06 | 11/06/06 | 06-75 | | | | 1 | | Homeowner | Vehicle ticketed after receiving permission to park. | Settlement agreement. Each side paid \$50 filing fee. |
| 06/06/05 | 11/08/06 | 05-31 | 1 | | | | | Association | Failure to maintain landscape. | Arbitration found in favor of Claimant. Respondent to reimburse Respondent \$3,000 in attorney's fees and \$2,000 in Arbitrator fees. |
| 06/06/06 | 11/14/06 | 06-78 | 1 | | | | | Association | Failure to maintain landscape. | Arbitration found in favor of Claimant. Respondent to reimburse Respondent \$2,150 in fines, \$3,198.50 in attorney's fees and \$706.20 in Arbitrator fees. |
| 04/11/06 | 11/27/06 | 06-67 | 1 | | | | | Homeowner | Architectural Review Committee allowed neighbor to plant trees in violation of CC & Rs. | Arbitration found in favor of Claimant. Respondent to pay 1/2 of Arbitration costs (\$1987.86) 1/2 of Claimant's attorney's fees (\$812.75) and all of it's attorney's fees (\$10437.50) |
| 1/23/2006 | 12/15/2006 | 06-41 | 1 | | | | | Homeowner | Mold Contamination | Arbitration found in favor of Claimant. Respondent to pay Claimant \$7434.00 and each side paid \$750 in Arbitration fees. |
| 10/16/2006 | 12/11/2006 | 06-46 | 1 | | | | | Homeowner | Assessment levied without proper authorization. | Arbitration found in favor of Respondent. Claimant is to reimburse Respondent \$50 for filing fee, \$524.16 in Arbitrator fees and costs, \$1,000 in attorney's fees. |
| 10/16/2006 | 12/11/2006 | 06-47 | | | | 1 | | Homeowner | Parking violation | Settlement agreement. Each side to pay for their own costs. |
| 2/17/2006 | 12/12/2006 | 06-52 | 1 | | | | | Homeowner | Interpretation of CC & Rs and roofers' lack of care. | Arbitration found in favor of Claimant. Respondents to pay Claimant \$32,680 for damages, \$14,400 in lost revenue, and \$28,172.36 for fees and Arbitrator costs. |
| 7/19/2006 | 12/12/2006 | 07-08 | | | | | 1 | Homeowner | Harassment | Dismissed by Arbitrator |
| 9/25/2006 | 12/20/2006 | 07-32 | 1 | | | | | Association | Failure to maintain landscape. | Arbitration found in favor of Claimant. Respondent to pay Claimant: \$5683.79 |
| 5/10/2006 | 12/28/2006 | 06-71 | 1 | | | | | Association | Building additions without prior approval. | Arbitration found in favor of Claimant. Respondents to pay Claimant \$5692.04 |
| 7/7/2006 | 12/28/2006 | 07-05 | 1 | | | | | Association | Failure to install landscape in a timely fashion. | Arbitration found in favor of Respondents. Each side is responsible for their own costs. |
| 9/25/2006 | 12/28/2006 | 07-34 | 1 | | | | | Association | Failure to maintain landscape. | Arbitration found in favor of Claimant. Respondent is to reimburse Claimant \$112.28 for service of process, \$50 NRED fee, \$205 L50 for attorney's fees, \$3815.00 for fines \$500 lawn repair. |
| 2/10/2006 | 1/12/2007 | 04-49 | | | | 1 | | Homeowner | Building of structure without prior approval. | Settlement agreement. Homeowner to remove patio enclosure, Association will waive fines associated with enclosure. Each side pays their own attorney's fees and Arbitrator fees. |
| 1/17/2006 | 1/12/2007 | 06-39 | 1 | | | | | Association | Failure to maintain landscape. | Arbitration found in favor of Claimant. Respondent to pay \$2149.86 in attorney's fees and \$375 of Arbitrator's fees. |
| 2/7/2006 | 1/17/2007 | 06-45 | | | | | 1 | Association | Failure to install landscape. | Dismissed by Arbitrator |
| 9/15/2006 | 1/25/2007 | 07-27 | | | | | 1 | Homeowner | Water Damage | Dismissed by Arbitrator |

New commissioner: Residents, boards must learn roles

Moving into a homeowners association is easy. Almost too easy. Many residents, it seems, hardly know they live in one at all until there is a problem. This is one of the central challenges facing the Commission for Common-Interest Communities and Condominium Hotels, according to newest member Marilyn Brainard.

As the homeowner member, Brainard joined the commission in November 2006, however she has attended meetings since its inception in 2004. Moving from California to Sparks in 1998, she arrived very familiar with the HOA concept.

The advantages of living in a common-interest community are easily found: the amenities, the maintained properties and the sense of continuity. Like everything else, they come at a price.

“HOAs come with rights and responsibilities,” she said. “Their success depends upon everyone following the rules. Those who want to have the benefits of an association need to accept the responsibilities and restrictions as well.”

While some disputes arise out of personality conflicts, Brainard believes effective communication within associations, combined with a statewide educational campaign, can solve a lot of property-use issues before they become problems. In part, the newness of the CIC concept remains a thorny issue.

“Not everybody comes in to his or her association with the same level of understanding,” she said. “A lot of the issues we see could easily be resolved if people understood their rights and responsibilities better. We need to make that a priority.”

More technical matters, such as financial management and reserve studies, are harder to resolve until the state gains more experienced community professionals. With the majority of new homes statewide being built within associations, the need for solutions is rising.

“The trend is certainly set that we are going to have more associations,” she said. “We hope to develop the resources to help educate the public and allow them to resolve things without having to come to us.”

Division mourns passing of friend, former ombudsman

Friends and former coworkers remember Eldon Hardy for his accommodating nature, compassion and get-it-done attitude, traits that would serve him well as Nevada’s second Ombudsman for Common-Interest Communities.

“Eldon was a doer,” said Sonya Meriweather, a program officer who joined the Office of the Ombudsman shortly after Hardy took the job in early 2001. “He made himself available. People knew they could come in and talk to Eldon.”



Hardy died July 18, 2007, at age 71 due to complications associated with Lou Gehrig’s Disease. He is survived by his wife, Annette, as well as many family members.

Hardy brought to the office a rich background of service, both as a businessman and volunteer. Along with his brother, Brent, he owned Hardy’s Automotive Service Center for nearly half a century.

Eldon Hardy would also found two local professional organizations, become a fixture of the North Las Vegas chapter of Rotary Club International, and build a reputation as a respected leader in his Mormon church.

His many years of serving as a mediator and certified arbitrator would ultimately lead him to his role as ombudsman.

Serving in the position from early 2001 to 2006, Hardy left his legacy with the rapid growth of the office and its functions. Starting with two employees, his office expanded to more than a dozen over the course of his tenure. Services grew beyond dispute intervention conferences for homeowners associations to include a multi-step resolution process, the creation of an independent commission, homeowner education programs, and a certification process for community managers.

The staff of the Real Estate Division offers its sympathy to all who were touched by Hardy’s passing.

Free seminars teach essentials of board membership

New to your HOA board? Looking for some help? The Office of the Ombudsman for Owners in Common-Interest Communities sponsors a series of free classes held throughout Nevada. Presented by Community Association Solutions, the classes are open to all. (CAMs: The following do not count as CE credits.)

“Basic Skills for Board Members” offers an overview of serving as a director on a Nevada common-interest community board. The seminar will provide checklists for annual planning and organization for board members as well as an overview of the industry and risks. Three dates remain: Jan. 9, 2008, from 2-5 p.m. at 2840 Needles Highway in Laughlin; March 3, 2008, from 2-5 p.m. at 150 N. Yucca St., Room 33B in

Mesquite; and Aug. 23, 2008, from 9 a.m. to noon at 5650 Riggins Court, east of Meadowood Mall in Reno.

“Considering Professional Management for a CIC” explains what to consider when hiring a community manager, what to expect from a manager, and how to work successfully with one. A sample contract is provided, along with a 55-page booklet. Remaining dates include March 26, 2008, from 6-9 p.m. at 3556 E. Russell Road; July 9, 2008, from 2-5 p.m. at 2840 Needles Highway; July 26, 2008, from 9 a.m. to noon at 5650 Riggins Court; and Sept. 12, 2008, from 2-5 p.m. at the Pahrump Community Center, 150 N. Highway 160. For more information, contact Sara Barry at 702-341-5200, or e-mail to seblv@aol.com.

Division welcomes new chief

Attorney Ann M. McDermott recently began her duties as the new administrator for the Real Estate Division, according to Mendy Elliott, director of the Department of Business and Industry.

“Ann McDermott has a broad background of legal and business experience and a thorough knowledge of the real estate industry,” Elliott said. “This is a broad-based division that is responsible for enforcing eight chapters of Nevada law and 11 licensing programs. Ann’s wide range of experience and her legal training will serve her well to administer all programs and work with the three commissions which serve the division’s programs.”

McDermott previously served as a deputy Nevada attorney in Las Vegas, where she represented injured workers in appeals of worker’s compensation claims. She previously served as managing attorney at Kimball, Tirey and St. John law firm in Las Vegas, and as an associate in other law firms.

“I thank Ms. Elliott for this privilege and also Gail Anderson for the exceptional contribution she made to the Real Estate Division during her tenure as administrator,” McDermott said. “I will surely strive to expand upon her outstanding record.”

Compliance brings integrity to contested HOA board elections

The Compliance section of the Real Estate Division recently intervened in the votes of two homeowners associations.

The first involved a board recall at a Northern Nevada community in late 2006. Despite meeting the required signatures by members and verification by the community manager, the board of directors failed to hold a scheduled recall vote as required by NRS 116, according to Bruce Alitt, chief investigator for Compliance. Alitt’s office told the board to hire a neutral third party to run the election, which it did voluntarily.

“When you face a valid recall election, you have to hold that election, even if it is for your seat,” he said. “The division is prepared to see that it happens as required by law.”

In another association, Alitt said controversy arose over the procedures of an election. Select members said the election wasn’t being conducted according to the community’s rules. The division’s familiarity with the law and neutrality ensured a relatively smooth election.

“They were grateful,” he said. “Our only interest is that elections are held fairly and according to law. We choose no sides.”

Although the division does not routinely intervene in elections, it does offer useful guidelines, including a free brochure, “Secret Ballot Written Guidelines.” It is available at the Office of the Ombudsman, 2501 E. Sahara Ave., Suite 202, or online at www.red.state.nv.us/publications/brochures.htm. The material cites relevant statutes and offers an example of a ballot that is in compliance with state law.

2007 Disciplinary Action by the Commission for Common-Interest Communities and Condominium Hotels

Meadowood Manor Condominium Association, Board of Directors Case No. IN-06-1055 May 2007

Allegations: The meeting on Dec. 15, 2005, for the ratification of the association's budget was improperly held. Notices for the meeting were mailed on Dec. 2, 2005. At that meeting, an increase in the monthly association fees exceeded the amount allowed by the association's declarations. The monthly assessments were to be raised from \$120 in 2005 to \$160 beginning in 2006, a 33 percent increase. The board approved the change in monthly assessment to \$160 and the membership ratified the budget, which included the increase. Article 13, subsection (e) of the association's declaration states in part that "the Board shall have no authority to increase the maximum yearly assessment more than twenty percent (20%) over the previous year without a majority vote of the membership of the Association."

A majority of the membership did not approve the increase in assessments over and above the 20 percent maximum. The board also violated NRS 116.31151(3) (2005) by mailing the notice for the budget ratification fewer than 14 days before the meeting.

Stipulated Settlement: Respondents agree to pay the division \$250 in administrative fines within six months after the effective date of the commission's order.

Royal Ridge Mobile Association, Board of Directors Case No. IN-06-1297 June 2007

Allegations: The association scheduled an annual board of directors election on Feb. 22, 2006. The association mailed ballots for the election to Grace E. Greer, an owner of two units within the association, on Feb. 16, 2006, about six days before the election. Ms. Greer received the envelope containing her ballots on Feb. 18, 2006.

Ms. Greer stated she spoke with Office Manager Mrs. Paula Walden, who informed Ms. Greer that Richard Burgel, the Association president at that time, told Mrs. Walden not to send Ms. Greer any ballots. Mr. Burgel knowingly and willfully prevented Ms. Greer from exercising her right to vote in the Board elections. Mr. Burgel admitted in an affidavit dated March 28, 2006, that Ms. Greer had not been fined and that her ballots were mailed to her only after she sent a letter asserting her right to vote.

The respondents, or individual respondents, violated NRS 116.31034 (8)(b) by mailing ballots to Ms. Greer fewer than 15 days before the Feb. 22, 2006 election.

During its May 31, 2006 association meeting, the Board of Directors refused to allow unit owner Ms. Lois Grillo to audio-tape the proceedings. The minutes dated May 31, 2006, stated that Richard Burgel moved to recess the meeting to deal with a property owner who appeared to be taping the meeting. Arbitrator C. Richard McCall entered an award on behalf of Ms. Grillo after a default hearing identified as NRED Control No. 06-53. The Order and Default Award stated Mr. Burgel denied Ms. Grillo her right to audio-tape the meeting.

Mr. Burgel, while conducting the Jan. 31, 2006, meeting, became verbally abusive and demanded that Ms. Grillo leave, claiming she was not in good standing due to one or more unpaid fines. Ms. Grillo was current on dues and in good standing. The Board, either individually or as a group, knowingly and willfully excluded Ms. Grillo from attending the meeting, violating NRS 116.31085 (1). Mr. Burgel also knowingly and willfully disclosed confidential information about Ms. Grillo at the Jan. 31, 2006, meeting without her consent, violating NAC 116.405(4).

A letter dated Dec. 18, 2006, from Joan H. Murdock, the Association president at that time, to the Real Estate Division cited NRS 116.3108 (2)(b) and admitted that the board at that time agreed that there were errors in the Feb. 22, 2006 election. NRS 116.3108 (2)(b) applies to special meetings or removal elections and has a 15-day notice requirement for sending ballots. NRS 116.31034 applies to elections of

See DISCIPLINARY ACTION on Page 12

Disciplinary Action

Continued from Page 11

members of the executive board and also has a 15-day notice requirement for sending ballots.

The letter also referenced NRS 116.31083 (11) (2005) and admitted that the section of law was violated by refusing to allow Ms. Grillo to audio-tape the May 31, 2006, meeting.

The letter also referenced NRS 116.31085 (1) and admitted the section of law was violated by refusing to let Ms. Grillo to attend the Jan. 31, 2006, meeting.

Stipulated Settlement: The Association agrees to pay the Division \$250 in administrative fines within three months of the effective date of the Commission's order approving this settlement.

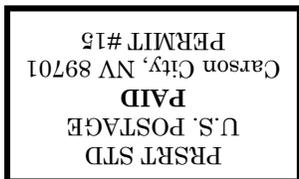
Mr. Burgel, personally and individually, agreed to pay to the Division \$500 in administrative fines within three months of the effective date of the Commission's order approving this settlement agreement.

Mr. Burgel also agreed to resign from the Associa-

tion's Executive Board, including any position as an elected or appointed officer, director, or member of a committee via a written, signed and dated letter addressed to the Executive Board within five business days of the Commission's acceptance of the agreement, and to deliver, via Postal Service or by hand, a copy of his resignation letter to the Administrator of the Division within 10 business days of the Commission's acceptance of the agreement.

Mr. Burgel further agreed that before the Association's 2009 elections, he will not run for or accept a position on the Association's Executive Board, act in the capacity of a board member or officer, or accept any position on a committee appointed by the Executive Board.

Mr. Burgel also agreed that, should he run for or accept any position on the Association's Executive Board in 2009, he shall, before beginning his term, attend the "Fiduciary Responsibilities" and "Handling Conflicts in an Association" seminars sponsored by the Ombudsman's Office for Common-Interest Communities and Condominium Hotels, or similar seminars.



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