

COMMUNITY INSIGHTS

VOLUME IX, ISSUE I

Department of Business and Industry, Real Estate Division

Summer 2012

Nevada Real Estate Division

OUR MISSION

The mission of the Nevada Real Estate Division is to safeguard and promote interest in real estate transactions by developing an informed public and a professional real estate industry.

Office of the Ombudsman

OUR MISSION

To provide a neutral and fair venue to assist homeowners and board members in handling issues that may arise while living in a common-interest community.

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Education outreach

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

To find an upcoming class visit <http://red.state.nv.us/cic.htm> and look for "Upcoming Classes."

All HOA residents welcome. Call Ken Richardson at (702) 486-4480 for registration and information.

Can't make a class? The slide presentations are posted online, along with lots of other resources.

From the Ombudsman's Desk

New referee program aims for greater clarity in CC&RS

By KARA JENKINS
OMBUDSMAN

Here at the Ombudsman's Office, staff is always eager to help assist homeowners and board members to understand their rights and responsibilities under the law.

This includes assisting unit owners in understanding issues arising under the governing documents of their respective associations.

Please recall governing documents include the community's Covenants, Conditions and Restrictions; more commonly referred to as "CC&Rs." Most owners or tenants do not become familiar with the CC&Rs until there is a violation notice issued to them — Nothing like an unwanted violation notice to get an individual's attention!

Even more frustrating to owners than a violation notice may be when certain provisions are unclear, confusing, or ambiguous when the unit owner is trying to abide by association rules. I have mediated several conferences where perhaps the governing documents are silent or allude to certain do's or don'ts. This ambiguity makes enforcement tricky and is an issue our Office will address with my Referee Program.

The Ombudsman's Referee Program is a service offered at no cost to homeowner's living in a common-interest community to have governing document issues clarified and interpreted. A referee is a legally and/or professionally trained individual who is appointed by the Ombudsman to provide



an independent level of review to assist homeowners and board members with the interpretation of their governing documents. Once a complaint is filed, this no-cost service may be offered to those

owners who are experiencing difficulty with the interpretation of their CC&Rs.

It is important to remember that as we move forward, out of summer and into the holiday season, how fortunate we are. Those who live in common-interest communities have added support during these hard economic times; the support of community. It may be the right time to make small strides to regain and perhaps "make-over" your homeowners' associations where there may be room for collaborative improvements in those shared common areas.

As always, the Office of the Ombudsman is a resource that is available when disputes are not easily resolved; however, I strongly encourage association residents to make every effort to turn their communities into the kind of places that they have always imagined themselves living. For many without homes, your communities would appear to be a paradise. Do not take what you have, little or big, for granted.

All positive changes start with a positive attitude and willingness to compromise.

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Commissioner's Corner

Resolutions should start at local levels



By **M. FAVIL WEST**
COMMISSION VICE CHAIRMAN

The Nevada Revised Statutes and each common-interest community's governing documents provide unit owners, boards of directors, and community managers with multiple means of resolving association-related disputes. Unfortunately, the dispute-resolution processes are poorly understood by many unit

owners, directors and CAMs, resulting in some claims being rejected for lack of evidence or timeliness.

Several reasons seem to surface for these filings including: a lack of knowledge and understanding of the law and governing documents by the complainant, a need for recognition, and/or the unelected attempting to coerce their associations through public offices.

I believe the filing of multiple complaints seeking redress from the state for real and/or imagined slights has become epidemic. Unit owners are being or have been encouraged by bloggers and others to bypass the dispute resolution process at a local level and file affidavits directly with the Ombudsman. They are either unaware of dispute resolution processes or choose to shortcut them.

Everything has a cost and filing of multiple affidavits directly with the Ombudsman is no exception. The costs of these filings to an HOA can be very high in terms of hard dollars, community reputation, property values, and the ability to attract quality volunteers. These costs can be mitigated by following the dispute resolution process.

What should be done if a person believes a violation has occurred? To keep it simple, let's reduce the dispute resolution process based on the level at which a dispute may be resolved. The process begins at the **local level**.

Step 1

Let's say a dispute arises over the interpretation or application of the law or governing documents, which the aggrieved party believes requires adjudication. The proper course of action is for the aggrieved party to file a written complaint with the community manager. The manager investigates and evaluates the complaint then meets with the complainant to attempt a resolution. In most cases, the issue is resolved at this point.

If a resolution can't be reached, the complaint is forwarded to the association's board for a hearing. If a resolution cannot be reached with the board, the complainant may file with the Ombudsman's Office.

Step 2

Once the affidavit is received by the Ombudsman, a

See CORNER on Page 3

Cities play complex role in associations

By **DEBRA MARCH**
HENDERSON COUNCILWOMAN



As elected officials in a local government, we often hear requests for the city to help with streets, landscaping, common areas and various other types of infrastructure and issues within HOA communities. However, what a city can and cannot do within an HOA can be as diverse as the various communities themselves. When an HOA community is formed, rather than paying a city government for certain services,

homeowners pay those fees directly to an HOA that is overseen by an elected board of directors. There are benefits to this: It allows the community to maintain a look and feel that is unique; and it may give them access to pools, playgrounds, parks or other benefits only available to members.

Many of these amenities are built to different standards from those normally required by the city. They are guaranteed to be maintained through the assessments HOA mem-

bers pay to have them in their communities.

The downside to this comes when homes go vacant, values go down, money gets scarce and things begin to deteriorate. Oftentimes associations or their residents want cities to come in and take ownership of these issues. Many do not understand why the city can't simply take over.

A good example of how this works can be illustrated by envisioning an HOA community with decorative street-lamps. The lamps may be aesthetically pleasing and really lend to the ambience of an HOA community. However, most don't conform to city standards. Parts, new poles and lamps are not stocked or available from the city when a pole is damaged, nor do we budget for their repair or replacement.

Those lamps are allowed based on the HOA's guarantee to maintain them. Non-HOA residents get the normal poles in their neighborhoods. While not as fancy, they were built to city standards, budgeted for and assessed in the formulas to plan for their upkeep and maintenance.

To assume the control and maintenance of an HOA's contractual obligations places an undue burden on cities, which may not be equipped or funded to do so. It also places an unfair financial burden on non-HOA residents, who would then assume the fiscal responsibility of paying

See CITY on Page 12

B&I Director Terry Johnson comments on Referee Program



I am pleased to introduce the Ombudsman's Referee Program, set to launch August of 2012. This program is just one of several services offered to assist those living in a common-interest community. The Ombudsman's Referee Program will afford owners the opportunity to understand their governing documents if and

when there is uncertainty as to the interpretation of certain provisions that may be of concern.

As Ombudsman Jenkins mentioned in her opening editorial, she will identify the candidates for this program based upon her review of the intervention affidavit and forward those complaints to a neutral Referee for a determination.

Equipped with this resource, it is my hope that owners and board members will enjoy a harmonious quality of life that can be found when all parties involved understand their governing documents.

Corner

Continued from Page 2

meeting is requested between the parties. The process is voluntary but highly recommended as it very often yields a resolution. The Ombudsman may also seek other feasible means to assist.

Step 3

For violations of NRS 116, the Ombudsman may refer a complaint to the Real Estate Division's Compliance section for investigation. For relatively minor violations, a letter of instruction may be sent to the violating party if the complaint proves true. If there is insufficient evidence, a letter is sent to the complainant stating so. More serious com-

plaints may go to a hearing before Commission for Common-Interest Communities and Condominium Hotels.

Disputes of governing documents may be referred to Alternative Dispute Resolution by the Ombudsman, which may involve formal mediation or arbitration. ADR is often very expensive for the claimant. Attorney and arbitrator fees can exceed \$20,000. Finally, if dissatisfied with ADR, a complainant may proceed to District Court.

No one is infallible so if a person believes they have an issue, by all means they should start the process. It is recommended to start at the local level with your CAM or if you don't have one, the president of your board.

Compliance Desk

Delays in resale packages cost HOAs, owners dearly

Some associations make it difficult to complete sales transactions by failing to provide required information to sellers in a timely manner, according to Sharon Jackson, compliance investigation supervisor.

“Associations are required to provide a resale package within the due diligence period of a home being purchased,” Jackson said. “Some of them are not providing it in a timely manner and, in some cases, buyers are walking away. This isn’t good for anyone.”

The resale package is a set of association documents that a unit owner must provide to a buyer before completing the sale. It is essential to the buyer, as it explains the association’s financial and legal status, its rules, and the current status of the unit in relation to its association. Full requirements are listed in NRS 116.4109.

“Both the association and the seller have responsibilities regarding the resale package,” Jackson said.

She explained the seller’s responsibilities are to:

- Request, in writing, a resale package from the HOA;
- Provide it to the buyer; and
- Include in the contract that the buyer may cancel the deal sale and receive a full refund up to midnight of the fifth day after the date of receiving the resale package.

The association’s primary responsibility is to provide the required information to the seller or seller’s agent within 10 days of receipt of the request. The association must guarantee the contents of the statement it provides for at least 15 working days.

Failure to provide the resale package or omission of any costs associated with the individual unit may cost the asso-

Resale package contents

Per NRS 116.4109, the resale package includes:

- the covenants, conditions and restrictions;
- bylaws;
- rules;
- a copy of the brochure “Before You Purchase in a Common-Interest Community, Did You Know ...”;
- a statement on the unit’s monthly assessment, plus any unpaid obligations owed;
- a copy of the HOA’s budget;
- current HOA financial statements;
- a summary of the reserves;
- a statement of any unsatisfied judgments or pending legal actions against the HOA;
- a statement of any transfer fees; and
- a schedule of fees, fines and interest the association may charge.

ciation its right to claim those costs.

“Whether it’s a fine, the loss of a sale or the loss of a client, everyone has something to lose by not complying,” Jackson said. “Associations must ensure records are up to date and accurate. Any errors or delays can be costly.”

Resale packages typically cost a few hundred dollars. Per NAC 116.465, an association may charge no more than \$160 to furnish paper copies of the “certificate,” which includes all of the information required in a resale package, except for the declaration, rules and regulations, a mandatory brochure, and the current financial documents. For these items, which may be hundreds of pages, the association may charge by the page at \$.25 per page for the first 10 pages and \$.10 per page thereafter. Some homes have more than one association and thus require a separate resale package for each.

Forms Forum

ADR overhaul simplifies paperwork requirements

The Ombudsman’s Office recently revised its Alternative Dispute Resolution (ADR) program to remove the requirement for participants to include full copies of their governing documents. Disputing parties may determine which portions of the documents they believe appropriate to include with the claim.

“This is a big relief for all of the parties involved in ADR,” said Sonya Meriweather, Program Officer III. “Previously, each party was expected to produce all of the association’s governing documents and distribute copies to the arbitrator and the other party via mail.”

She explained the arbitrator would end up with two full copies of the documents and would sometimes only need a small section of one. The disputing parties would also mail each other copies of the same documents.

The change also reduces copying required by the Real

Estate Division, saving the state on printing expenses.

Accompanying ADR forms have been updated to reflect the changes. Any party planning to use the process is advised to obtain a copy of the new forms, especially Form 520, Alternative Dispute Resolution/ Residential Planned Communities Claim Form, from the Division’s Web site, www.red.state.nv.us.

Appropriate changes have also been made to Form 521, Alternative Dispute Resolution/ Residential Planned Communities—Respondent Answer; and Form 523, Residential Common Interest Alternative Dispute Resolution Overview.

Meriweather said more substantive changes are under consideration, among them increasing the number of approved arbitrators and mediators, and modifying the arbitration subsidy program to make it more effective.

Alternative Dispute Resolution Claims From January 1, 2012 to June 30, 2012

DATE OPENED	DATE CLOSED	CLAIM	FILED BY	RESOLUTION TYPE	NATURE OF CLAIM	DISPOSITION
01/07/11	01/04/12	11-50	Homeowner	Non-Binding Arbitration	Improper Foreclosure	The arbitrator found for the homeowner. The association did not participate. The association must pay the owner \$3,606: \$3,306 in fines and \$300 in arbitration fees.
06/28/11	01/04/12	11-96	Homeowner	Dismissed by Arbitrator	Additional Assessments	Dismissed by Arbitrator
05/17/11	01/12/12	11-84	Homeowner	Mediation	Revoking of Approved Plans	Mediation
04/05/11	01/25/12	11-68	Association	Non-Binding Arbitration	Delinquent Assessments	The arbitrator found for the association. The owner did not participate. The owner must pay the association \$6,779.19, \$3,027.82 in attorney fees and \$1,682.56 in arbitration fees.
04/05/11	01/25/12	11-69	Association	Non-Binding Arbitration	Delinquent Assessments	The arbitrator found for the association. The homeowner did not participate. The owner must pay the association \$6,162.93, \$3,300.98 in attorney fees and \$1,682.56 in arbitration fees.
12/07/11	02/10/12	12-51	Association	Withdrawn by Claimant	Enforcement of Governing Documents	Withdrawn by Claimant
10/07/11	02/09/12	12-29	Homeowner	Settlement	Property Damage	Settlement
09/02/11	02/08/12	12-06	Homeowner	Non-Binding Arbitration	Improper Use of Reserve Funds	The arbitrator found for the association. The homeowner and association each must pay \$3,122.33 in arbitrator fees. The owner must also pay \$3,000 for attorney fees.
08/30/11	03/05/12	12-10	Association	Non-Binding Arbitration	Enforcement of Governing Documents	Settlement
03/17/11	03/05/12	11-64	Homeowner	Non-Binding Arbitration	Fines	Settlement
09/16/11	03/12/12	12-23	Homeowner	Settlement	Improper Collection of Fees	Settlement
09/13/11	03/13/12	12-20	Homeowner	Settlement	Fines	Settlement
05/18/11	03/15/12	11-85	Homeowner	Mediation	Maintenance of Property	Mediation
04/14/11	03/22/12	11-77	Homeowner	Non-Binding Arbitration	Enforcement of Governing Documents	The arbitrator found for the owner. The association must pay \$19,600 in attorney fees and \$3,614.79 in arbitration costs.
11/08/11	03/22/12	12-38	Homeowner	Withdrawn by Claimant	Improper towing	Withdrawn by Claimant
11/08/11	03/22/12	12-38	Homeowner	Withdrawn by Claimant	Vehicle Towed Improperly	Withdrawn by Claimant
09/09/11	03/22/12	12-21	Homeowner	Settlement	Fines	Settlement
10/19/11	03/23/12	12-30	Homeowner	Mediation	Improper Collection of Fees	Mediation
02/07/12	03/30/12	12-61	Homeowner	Withdrawn by Claimant	Improper Collection of Fees	Withdrawn by Claimant
12/02/11	04/03/12	12-47	Association	Non-Binding Arbitration	Enforcement of Governing Documents	The arbitrator found for the association. The homeowner must pay \$750 in arbitrator fees, \$9,331.13 in delinquent assessments, \$19,800 in fines and \$6,325.72 for association attorney fees.
02/25/11	04/18/12	11-56	Homeowner	Settlement	Property Damage	Settlement
03/05/12	04/23/12	12-76	Homeowner	Withdrawn by Claimant	Enforcement of Governing Documents	Withdrawn by Claimant

Alternative Dispute Resolution Claims From January 1, 2012 to June 30, 2012 Cont.

CLAIM	DATE OPENED	DATE CLOSED	NATURE OF CLAIM	FILED BY	RESOLUTION	DISPOSITION
12-27	09/28/11	04/25/12	Homeowner	Non-Binding Arbitration	Improper Collection of Fees	The arbitrator found for the association. The homeowner must pay the association \$14,029.98 in costs, including attorney and arbitrator fees.
12-41	11/14/11	05/02/12	Homeowner	Withdrawn by Claimant	Enforcement of Governing Documents	Withdrawn by Claimant
12-95	04/12/12	05/07/12	Association	Withdrawn by Claimant	Enforcement of Governing Documents	Withdrawn by Claimant
12-36	11/03/11	05/22/12	Homeowner	Settlement	Fines	Settlement
12-14	09/01/11	05/29/12	Homeowner	Non-Binding Arbitration	Improper Collection of Fees	The arbitrator found for the associations, ruling they properly collected the monetary amounts to which they are entitled under law.
12-15	09/01/11	05/29/12	Homeowner	Non-Binding Arbitration	Improper Collection of Fees	The arbitrator found for the associations, ruling they properly collected the monetary amounts to which they are entitled under law.
12-18	09/01/11	05/29/12	Homeowner	Non-Binding Arbitration	Improper Collection of Fees	The arbitrator found for the associations, ruling they properly collected the monetary amounts to which they are entitled under law.
12-4	08/16/11	06/06/12	Homeowner	Withdrawn by Claimant	Property Damage	Withdrawn by Claimant
12-9	09/07/11	06/06/12	Association	Non-Binding Arbitration	Enforcement of Governing Documents	The arbitrator found for the association, awarding it \$2,100 in fines, \$3,172.75 in attorney fees and \$1,275 in arbitrator fees.
12-17	08/18/11	06/06/12	Homeowner	Settlement	Enforcement of Governing Documents	Settlement
11-60	03/11/11	06/07/12	Homeowner	Non-Binding Arbitration	Revoking of Approved Plans	The arbitrator found for the association, denying the owner reimbursement for home improvement expenses. There was no monetary award.
12-59	02/01/12	06/21/12	Homeowner	Withdrawn by Claimant	Enforcement of Governing Documents	Withdrawn by Claimant
12-83	03/26/12	06/25/12	Homeowner	Dismissed by Arbitrator	Improper Collection of Fees	Dismissed by Arbitrator
12-88	04/04/12	06/25/12	Association	Settlement	Enforcement of Governing Documents	Settlement
12-49	12/02/11	06/25/12	Association	Non-Binding Arbitration	Unauthorized Improvements	The arbitrator found for the association, awarding it \$7,040.56 in attorney fees and \$1,342.76 in other fees.
12-50	12/02/11	06/25/12	Association	Non-Binding Arbitration	Unauthorized Improvements	The arbitrator found for the association, awarding it \$7,527.50 in attorney and \$1,345.36 in other fees.
12-52	01/11/12	06/27/12	Homeowner	Settlement	Collection of Fees Improperly	Settlement
12-39	11/10/11	06/27/12	Homeowner	Settlement	Property Damage	Settlement
12-55	01/31/12	06/27/12	Homeowner	Settlement	Revoking of Approved Plans	Settlement
12-65	02/13/12	06/29/12	Association	Non-Binding Arbitration	Maintaining Property	The arbitrator found for the association, awarding it \$13,000 in accrued fines and \$2,125 in arbitrator fees.

Disciplinary Actions/ Stipulations

Irene Iwanylo
Case No. CIS 10-09-03-033,
CIS 10-06-03-278
March 2012
Community Manager

The matters came before the Commission for Common-Interest Communities and Condominium Hotels on March 6, 2012. The respondent failed to appear at the hearing.

Findings of Fact: The respondent held a community manager's certificate issued by the Nevada Real Estate Division. After the certificate became inactive, the respondent continued to act as a community manager.

The Division gave proof that the respondent was given proper notice of the hearing, which the Commission accepted and, pursuant to NAC 116.580, considered the charges to be true.

Conclusions of Law: The respondent was given proper notice of hearing regarding both complaints and the State met its burden regarding all factual allegations and violations in the complaints. Per NAC 116.580, the charges in the complaints were considered true.

Order: Respondent shall pay to the Division within 90 days a total fine of \$112,801: \$80,000 in fines and \$1,400.50 for the cost of the hearing regarding CIS 10-09-03-033 and \$30,000 in fines and \$1,400.50 for the cost of the hearing regarding CIS 10-06-03-278. The respondent's management certificate was revoked and the respondent must appear before the Commission if she wishes to re-apply.

Theresa Da Silva
Case No. CIS 10-10-06-046
June 2012
Community Manager

Factual Allegations: The respondent was the community manager for Sun City Anthem Community Association through her employer, RMI Management.

During or about summer 2008, the association approved solicitation of bids to build shade structures in the Independence Center courtyard. Per the management agree-

ment, "the Managing Agent shall obtain the necessary bids per Nevada Revised Statutes and shall submit projects funded from capital appropriations or the appropriate Reserve Fund to the standing committees and the Board of Directors of the Association for approval. The Managing Agent shall coordinate and supervise the completion of the approved projects." The agreement also required hiring, paying and negotiating agreements with "independent licensed contractors required for the proper maintenance and operation of the business of the Association."

Three bids were acquired. The original packet to committees and the board contained no information regarding the contractor's licenses of any of the bidders. Shade & Steel Structures LLC was approved by the committees and the board to install the structures, which were subsequently completed in or about September 2008.

In December 2008, a snow storm caused a shade structure to collapse. The association paid Shade & Steel about \$5,000 to repair it. Neither the company nor its principal, Terence Gilpin, were a licensed Nevada contractor.

The respondent worked on the project with facilities manager Bruno Panek, who advised that a contractor's license was not required for the project; however, pursuant

to NRS 624, the project did require a contractor's license to undertake.

Mr. Gilpin was charged in Henderson Justice Court, Case No. 09FH0826Q, with "willfully, unlawfully, feloniously and knowingly engaging in the business of or acting in the capacity of a contractor" in connection with the project. The matter is pending.

The Nevada State Contractors Board Web site offers instant information regarding contractor's licensure. The respondent was responsible

for ensuring the proper licensure of contractors, and could not reasonably abrogate her statutory and contractual duty to a facilities manager.

Allegations of Law: The respondent allegedly violated NAC 116.360 (1)(a)(1) and (b) (as the law read at the time) by "failing to disclose any material fact or other information that she knows or, in the exercise of reasonable care or diligence, should have known, which concerns or relates" to the association.

The respondent also allegedly violated NAC 116.360 (1)(a)(2) and (3)(b) (as the law read at the time) by "failing to exercise reasonable skill and care" in her duties; and allegedly violated NAC 116.360 (1)(a)(1 and 2) and NAC 116.360 (4)(j) (as the law read at the time) by "failing to

Actions/Decisions

Acts of the Commission for Common-Interest Communities and Condominium Hotels are not published in this newsletter by the Real Estate Division until after the 30-day period for filing under Judicial Review. If a stay on discipline is issued by the court, the matter is not published until the final outcome of the review.

Allegations/Stipulations

Stipulations occur when both the respondent and the Division have agreed to conditions reviewed and accepted by both sides. A stipulation may or may not be an admission of guilt.

Disciplinary Actions/ Stipulations

acquire knowledge of all material facts that are reasonably ascertainable and are of customary or express concern” to the association.

Settlement: The respondent agreed to pay a \$1,000 fine within 60 days and attend classes on ethics and contracts, beyond her ordinary continuing education requirements.

Deborah Genato Case No. CIS 12-09-14-071 June 2012 Community Manager

The matter came before the Commission on December 6, 2011. The respondent failed to appear at the hearing.

Findings of Fact: The respondent was a provisional community manager.

The Division gave proof that the respondent was given proper notice of the hearing, which the Commission accepted and, pursuant to NAC 116.580, considered the charges to be true.

On Sept. 23, 2011, the respondent entered a plea with the U.S. government regarding criminal case No. 2:11-CR-399-LDG-GWF, pleading guilty to a felony charge of conspiracy to commit wire and mail fraud. In the plea, she specifically admitted that all of the below facts are true.

From at least February 2007 through February 2009, the respondent knowingly participated in a scheme to control various association boards so that the boards would award contracts relating to construction defect law suits and remedial construction to co-conspirators.

Once hired, community managers, including the respondent, accepted financial considerations for using their positions to gain inside information, make recommendations and conceal their relationships with co-conspirators. Doing so created a false appearance of legitimacy in association business when in fact it served to enrich the co-conspirators at the associations' expense.

Co-conspirators acted as straw purchasers in various associations, using “bill pay” programs through limited liability companies to manage and operate payments for the properties. Many payments were wired from California. Some co-conspirators took a partial ownership interest to appear as bonafide homeowners.

The straw purchasers and partial owners were paid to run for election to the board. To ensure they won, the respondent and co-conspirators used deceitful tactics, such as false phone surveys, using mail lists to vote for out-of-town owners, and submitting fake and forged ballots. Private investigators were hired to find “dirt” on opposing candidates. The respondent used her position at Vistana, Park Avenue and Chateau Nouveau to facilitate these tactics.

Co-conspirators also hired attorneys, referred to as “special election masters,” to run the elections, supposedly contacting bonafide owners about the election, sending out election materials, collecting ballots and presiding over the ballot count. The attorneys were given personal financial benefits for taking part in the conspiracy.

Following the election, the conspirators would meet to manipulate votes on key issues. They often created fake bids for “competitors.” In addition, they awarded initial contracts for emergency remediation with a “right of first refusal” clause to ensure co-conspirators were awarded contracts following construction defect litigation.

Conclusions of Law: The respondent was given proper notice of hearing regarding both complaints and the State met its burden regarding all factual allegations and violations in the complaints. Per NAC 116.580, the charges in the complaints were considered true.

The respondent violated the following sections of law:

- NRS 116A.600 by failing to notice the Division in writing of her guilty plea to felony wire and mail fraud;
- NRS 116A.610 by failing to disclose her expectation to receive financial compensation from co-conspirators;
- NRS 116A.630 (1)(a) by failing to act as a fiduciary to her clients by accepting compensation from co-conspirators; allowing co-conspirators to access to ballots cast by bonafide owners before the election; and recommending co-conspirators for contracts and concealing her relationships with them;
- NRS 116A.630 (1)(b) by failing to exercise ordinary and reasonable care as a community manager;
- NRS 116A.630 (2)(a) by failing to comply with all applicable federal, state and local laws, regulations and ordinances;
- NRS 116A.630 (2)(b) by failing to comply with the lawful provisions of each client's governing documents;
- NRS 116A.630 (6) by failing to establish procedures to provide reasonable assurances in the reliability of the financial reporting, including proper maintenance of accounting records, fraud detection and prevention, and compliance with all applicable laws;
- NRS 116A.640 (1) by disclosing privileged information relating to clients Park Avenue and Chateau Nouveau, including mailing lists and labels;
- NRS 116A.640 (11) by accepting compensation for her assistance in purchasing properties, obtaining membership status, rigging elections and using her position to manipulate association business and enrich the conspirators;
- violated NAC 116A.355 (1)(a)(1) by engaging in unprofessional conduct;
- NAC 116A.355 (1)(a)(2) through professional incompetence by failing to protect against fraud, misrepresentation or unethical practices, failing to comply with applicable governing documents, and failing to act in the best interest

of clients pursuant to NAC 116A.355 (4)(a, e and g);

- NAC 116A.355 (1)(a)(3 and 4) by engaging in negligent or grossly negligent conduct and committing a felony involving an offense of moral turpitude; and

- NAC 116A.355 (2)(c) by engaging in deceitful, fraudulent or dishonest conduct by actively participating in the fraudulent election process at each of Vistana, Park Avenue and Chateau Nouveau in violation of NRS 116.31034.

Order: The respondent was ordered to pay the Division \$23,922, including \$23,000 in fines and \$922 for Division's expenses, and her management certificate was revoked.

Denise Keser
Case No. CIS 12-12-02-094
June 2012
Community Manager

The matter came before the Commission on March 6, 2012. The respondent, Denise Keser, was present at the hearing, represented by Conor Flynn, Esq.

Findings of Fact: The respondent was a supervisory community manager.

On Nov. 1, 2011, the respondent entered a plea with the U.S. government regarding criminal case No. 2:11-CR-00382-GMN-GWF, pleading guilty to a felony charge of conspiracy to commit wire and mail fraud. In the plea, she specifically admitted all of the below facts are true:

From at least April 2006 through February 2007, the respondent knowingly participated in a scheme to control various boards of directors so that the boards would award contracts for construction defect law suits and remedial construction to co-conspirators.

Co-conspirators acted as straw purchasers in various associations, using "bill pay" programs through limited liability companies to manage and operate payments for the properties. Many payments were wired from California. Some co-conspirators took a partial ownership interest to appear as bonafide homeowners.

The straw purchasers and partial owners ran for election to the board, receiving payment for doing so. To ensure their election, the respondent and co-conspirators used deceitful tactics, such as putting watermarks on ballot and using mailing lists to forge ballots for out-of-town owners. The respondent observed co-conspirators using lists to mail ballots to Vistana owners who would vote for co-conspirator candidates. The respondent used her position at Chateau Nouveau to send emails to owners intended to smear the reputation of bonafide candidates.

Co-conspirators also hired attorneys, referred to as "special election masters," to run the elections, supposedly contacting bonafide owners about the election, sending out election materials, collecting ballots and presiding over the ballot count. The attorneys were given personal financial benefits for taking part in the conspiracy.

Following the election, the conspirators would meet to manipulate votes on key issues.

In or around September 2006, the respondent agreed to open a management company that would be owned by co-conspirators. In exchange, her co-conspirators gave her a weekly salary, among other things. The respondent ran all of co-conspirator expenses on a company credit card.

The respondent observed a co-conspirator causing on-site maintenance personnel at Chateau Nouveau to quit, allowing the co-conspirator's employees to replace them and be paid through the management company.

The respondent accepted payments in exchange for inside information and make recommendations while concealing her relationships with co-conspirators. The process created a false appearance of legitimacy while serving only to enrich the co-conspirators at the association's expense.

The respondent admitted to the allegations in the complaint and counsel stated there is a pending criminal case and that Ms Keser's guilty plea includes these facts.

Conclusions of Law: The respondent was given proper notice of the hearing and the Commission finds that the charges specified in the complaint are true and supported by substantial evidence. The respondent violated:

- NRS 116A.610 (1) by failing to disclose her expectation to receive financial compensation from co-conspirators;
- NRS 116A.610 (2) by failing to disclose the affiliation and financial interest in the management company she headed regarding her co-conspirators;
- NRS 116A.630 (1) by failing to act as a fiduciary in her client relationships by knowingly participating in a scheme to control various association boards and award contracts to co-conspirators; accepting payment in exchange for inside information; allowing co-conspirators to gain access to ballots; allowing co-conspirators to run a "bill pay program" to fund straw buyers; concealing her relationship with co-conspirators from bonafide owners; using her position at Chateau Nouveau to send emails to owners to smear legitimate board candidates; pressuring personnel at Chateau Nouveau to quit; and paying co-conspirator's employees to work at Chateau Nouveau and concealing their relationship with co-conspirators;
- NRS 116A.630 (2)(a) by failing to comply with all applicable federal, state and local laws, regulations and ordinances;
- NRS 116A.630 (2)(b) by failing to comply with the lawful provisions of each client's governing documents;
- NRS 116A.630 (6) by failing to establish procedures to provide reasonable assurances in the reliability of the financial reporting, including proper maintenance of accounting records, fraud detection and prevention, and compliance with applicable laws governing financial records;
- NRS 116A.640 (1) by disclosing confidential information relating to clients Park Avenue and Chateau Nouveau by providing mailing lists, labels and other information;
- NRS 116A.640 (11) by accepting compensation for her assistance in purchasing properties, obtaining membership status, rigging elections and using her position to manipu-

Disciplinary Actions/ Stipulations

late association business and enrich the conspirators;

- NAC 116A.355 (1)(a)(1) by engaging in unprofessional conduct;
- NAC 116A.355 (1)(a)(2) through professional incompetence by failing to protect the public against fraud, misrepresentation or unethical practices, failing to comply with applicable governing documents, and failing to act in the best interest of clients pursuant to NAC 116A.355 (4)(a, e and g);
- NAC 116A.355 (1)(a)(3 and 4) by engaging in negligent or grossly negligent conduct and committing a felony involving an offense of moral turpitude; and
- NAC 116A.355 (2)(c) by engaging in deceitful, fraudulent or dishonest conduct by actively participating in the fraudulent election processes at Vistana and Chateau Nouveau in violation of NRS 116.31034.

Order: The respondent shall pay Division \$24,757, including \$24,000 in fines and \$757 for expenses; and the respondent's management certificate is revoked.

Alice Lucus
Case No. CIS 10-05-09-258
June 2012
Community Manager

The matter came before the Commission on December 6, 2011. The respondent, Alice Lucus, failed to appear at the hearing. Commissioners Robert Schwenk and Michael Buckley recused themselves from the hearing.

Findings of Fact: The respondent was a community manager.

The Division gave proof that the respondent was given proper notice of the hearing, which the Commission accepted and, pursuant to NAC 116.580, considered the charges to be true.

The respondent, employed by RMI Management, was on-site manager for Las Vegas Motorcoach Resort Owners Association.

As community manager, she had access to an association debit card connected to Wells Fargo. An association audit revealed the respondent used the debit card to withdraw funds for personal use on 35 occasions between July 11, 2009 and Dec. 15, 2009. The unauthorized withdrawals for personal use added up to \$10,529.77.

RMI issued checks to the association for \$10,045.49 and \$484.28 as reimbursement for the misappropriated funds.

Since the investigation began, letters sent to the respondent's last known address has returned as undeliverable.

Conclusions of Law: The respondent was given proper notice of the hearing and therefore the Commission found the allegations in the complaint. The respondent commit-

ted 35 separate violations of NRS 116A.640 (4) for using client money for personal expenses and violated NAC 116.340 (1) by failing to give written notice to the Division of her change of address within 10 business days.

Order: The respondent was ordered to pay the Division \$72,972, including \$72,000 in fines and \$972 for expenses; and the respondent's management certificate is revoked.

Debi Pike
Case No. CIS 12-08-29-038
June 2012
Community Manager

The respondent engaged in activities requiring a community manager's certificate and therefore subject to the jurisdiction of the Division and provisions of NRS 116, NRS 116A, NAC 116 and NAC 116A.

Factual Allegations: The respondent was issued a provisional community manager's certificate effective Feb. 5, 2009 through Feb. 28, 2011 and then a community manager's certificate effective July 25, 2011. She was therefore not licensed from March 1, 2011 through July 24, 2011.

After the expiration of her first community management certificate, the respondent continued to perform community management duties by signing and submitting a registration and a check payable to the division for the Sonora Hills association on July 13, 2011, as well as signing four other checks on behalf of Sonora Hills.

Violations of Law: The respondent violated NRS 116A.400 by signing and submitting an Annual Registration for Sonora Hills while not a licensed community manager and for signing checks on behalf of the association.

Settlement: The respondent admitted and stipulated to the Factual Allegations and Violations of Law. She agreed to pay a \$5,000 fine and attend a 3-hour classroom course on law within 12 months, beyond her usual continuing education requirements. Failing to abide by the terms shall result in immediate suspension of her certificate.

Mary Ann Watts
Case No. CIS 12-10-22-084
June 2012
Community Manager

The matter came before the Commission on December 6, 2011. The respondent, Mary Ann Watts, failed to appear at the hearing.

Findings of Fact: The respondent was a community manager.

The Division gave proof that the respondent was given proper notice of the hearing, which the Commission accepted and, pursuant to NAC 116.580, considered the charges to be true.

On Oct. 21, 2011, the respondent entered a plea agreement with the United States government regarding criminal case No. 2:11-CR-336-JCM, pleading guilty to a felony charge of conspiracy to commit wire and mail fraud. In the plea, she specifically admitted all the below facts are true.

From at least spring 2006 through February 2009, respondent knowingly participated in a scheme to control various association boards of directors so that the boards would award contracts relating to construction defect law suits and remedial construction to co-conspirators.

Co-conspirators acted as straw purchasers in various associations. Other co-conspirators managed and operated property payments by running “bill pay” programs through various companies. Some payments were wired from California to Nevada. Some co-conspirators took a partial ownership interest to appear as bonafide homeowners.

The straw purchasers and partial owners were paid to run for the board. To ensure they would win, the respondent and co-conspirators used deceitful tactics, such as conducting false phone surveys, using mailing lists to vote for out-of-town owners, and submitting fake and forged ballots. Private investigators were hired to find “dirt” on opposing candidates.

Co-conspirators also hired attorneys, referred to as “special election masters,” to run the elections, supposedly contacting bonafide owners about the election, sending out election materials, collecting ballots and presiding over the ballot count. Attorneys were given personal financial benefits for aiding in rigging elections. The respondent provided Vistana election ballots to co-conspirator attorneys.

Once elected, the conspirators would meet to manipulate votes on key issues. Often, the conspirators would create fake bids for “competitors” to make the process look legitimate. In addition, co-conspirators’ initial contracts for emergency remediation contained a “right of first refusal” clause to ensure they continued to be awarded contracts following construction defect litigation.

In or around August 2006, the respondent agreed to open a management company that co-conspirators would own. The company was used to manage boards at Vistana, Chateau Versailles, Chateau Nouveau and others. For her role, the respondent received two months’ rent on a unit at Chateau Versailles from co-conspirators. The respondent covered expenses and was reimbursed by a co-conspirator. She cut checks to co-conspirators and paid their employees through the company to conceal their relationships.

The respondent allowed co-conspirators to create and review meeting agendas in advance so conspirators could arrange how they would manipulate votes. She also took calls from co-conspirators during board meetings, enabling them to communicate secretly with conspiring directors.

The respondent recommended associations hire companies designated by co-conspirators while concealing her

connections to them. In or around November 2006, the respondent, at the direction of a co-conspirator, called an emergency board meeting to award a co-conspirator as counsel for construction defect litigation.

The process created a false appearance of legitimacy but only served to enrich the co-conspirators at association expense.

Conclusions of Law: Respondent was given proper notice of the hearing and pursuant to NAC 116A.590, the Commission finds that the charges specified in the complaint are true. The respondent violated:

- NRS 116A.610 (1) by failing to disclose her expectation to receive financial compensation from co-conspirators;
- NRS 116A.630 (1) by failing to act as a fiduciary in her client relationships by participating in rigging elections at Vistana; cutting checks to co-conspirators’ employees from association accounts while concealing employees’ ties to co-conspirators; allowing co-conspirators to create and review meeting agendas, meet with co-conspirator board members and secretly speak with board members during meetings, all to manipulate votes; and recommending that associations hire co-conspirators;
- NRS 116A.630 (2)(a) by failing to comply with all applicable federal, state and local laws, regulations and ordinances;
- NRS 116A.630 (2)(b) by failing to comply with lawful provisions of each client’s governing documents;
- NRS 116A.630 (6) by failing to establish procedures to provide reasonable assurances in the reliability of the financial reporting, including proper maintenance of accounting records, fraud detection and prevention, and compliance with applicable laws governing financial records;
- NRS 116A.640 (1) by disclosing confidential information relating to clients Park Avenue and Chateau Nouveau, including mailing lists and labels;
- NRS 116A.640 (11) by accepting compensation for her assistance in purchasing properties, obtaining membership status, rigging elections and using her position to manipulate association business and enrich the conspirators;
- NAC 116A.355 (1)(a)(1) by engaging in unprofessional conduct;
- NAC 116A.355 (1)(a)(2) through professional incompetence by failing to protect the public against fraud, misrepresentation or unethical practices, failing to comply with governing documents, and failing to act in the best interest of clients pursuant to NAC 116A.355 (4)(a, e and g);
- NAC 116A.355 (1)(a)(3 and 4) by engaging in negligent or grossly negligent conduct and committing a felony involving an offense of moral turpitude; and
- NAC 116A.355 (2)(c) by engaging in deceitful, fraudulent or dishonest conduct by actively participating in the fraudulent election processes at Vistana and Chateau Nouveau in violation of NRS 116.31034.

Order: The respondent shall pay \$24,757, including \$24,000 in fines and \$757 for expenses and the respondent’s management certificate is revoked.

City

Continued from Page 3

to maintain the additional amenities within HOA communities without receiving any benefits within their own neighborhoods.

As you can see, the problems can be complex. Nevada's communities continue to struggle with the economic downturn and greater pressure has been placed on both HOAs and municipal governments to meet the service needs and wants of our residents.

Times are tough, money is tight, and both cities and HOAs are stretched to meet the obligations they have to maintain the infrastructure and quality of life their residents want. This makes cooperation more important than ever.

While daunting, solutions can be reached, but it will take all of us working together to keep our residents happy, safe and enjoying the great quality of life they expect.

Debra March is a councilwoman for the City of Henderson and represents the residents of Ward II. She retired in September 2009 from the University of Nevada, Las Vegas, College of Business, where she was the executive director of the Lied Institute for Real Estate Studies. Before joining UNLV, Debra was director of marketing for the city of Las Vegas Office of Business Development and served as deputy administrator of the Nevada Real Estate Division.

Homes or Faces?



Remember your neighbors are more than buildings; they are people. Upon closer inspection, every home has a face or family it represents. Make every effort to be personable and see how much easier it will be to communicate any problems with the goal of moving forward.

— Ombudsman Jenkins

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