

COMMUNITY INSIGHTS

VOLUME VIII, ISSUE III

Department of Business and Industry, Real Estate Division

Spring 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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Seminars under way

Classes for unit owners are once again under way. Subjects include basics for board members, rights and responsibilities of HOA residents, meetings, elections and recordkeeping. Classes are free and open to all. For a list of classes, call (702) 486-4480 or visit: http://red.state.nv.us/cic/Calendars/omb_seminars.pdf.

Join our e-mail list

Want updates on available classes, regulation changes and other news affecting CIC unit owners? Join our email list. Updates are sent a couple times per month and we do not share your email with anyone. To receive updates, call (702) 486-4480 or email to nhaley@red.state.nv.us.

From the Ombudsman's Desk

Legacy matters among association neighbors

HOA members create lasting impression on each other that affects community's culture

Life and professional experiences have introduced and exposed me to a diverse group of people. Perhaps my social manner and curiosity of all people come from my father, who at any given moment during my time growing up would befriend some stranger and, to my mother's surprise, we would sometimes find ourselves adding an extra dinner plate for our new "friend."

In my conversations, I have found that one common sentiment remains despite differences in background, religion, culture and political affiliations, and it is this: *legacy matters*. In my opinion, most people want to leave this earth with some positive impact to benefit future generations. Fame or wealth is never the popular answer although most might think those to be the obvious choices.

In pondering this, it has become apparent to me that a huge motivation for us all, despite our many differences, is to leave a mark, a positive impression on those who will follow behind us.

I wondered how this sentiment, if applied to owners and board members living in an HOA, would affect the relationships among those who live in a common interest community. Most people who purchase into an HOA understand that preservation of the property and common elements for current and future resi-



dents is vital to maintaining property values, aesthetic appeal and everyone's investment. Protecting everyone's investment in the common-interest com-

munity requires cooperation by all residents. It involves looking at one's own actions and responsibilities to others who live in the community. It means accepting when one is no longer a board member and trusting others elected to the board to do their jobs. It also means making an effort to clear up miscommunications between owners and the community manager, so that notice of all meetings and fines/hearings are properly addressed. It means using state resources prudently in assistance of any real problems or communication barriers between board and homeowners. Finally, it means treating everyone with respect and dignity; and dare I even say with a smile?

Why, you may ask, does all this matter? Well, let me ask you this: In your dealings with your neighbors and fellow CIC partners, what do you want your legacy to be? Someone who caused more problems than progress? The choice is up to all of us.

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

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Commissioner's Corner **Commissioner: Not all proposals would work in practice**



By **MARILYN BRAINARD**
 COMMISSION SECRETARY

In the fall issue of Community Insights, Ombudsman Kara Jenkins spoke on the homeowner's responsibility to become familiar with his or her association's covenants, conditions and restrictions — a refreshing idea. Akin

to that is for an owner to adopt a positive attitude and spirit of cooperation and compromise.

Homeowners sometimes don't fully consider the implications of a new state law. Many amendments to NRS 116 are proposed; some surprise or even startle me.

Let's recap some of the proposals from the 2011 session that didn't make it into law:

Subject CICs to Open Meeting Law, even though most are private corporations. This law mostly applies to public bodies with the power of taxation.

Increase the annual per door fee from \$3 to \$6 to outsource unit owners' violation hearings from the association to either the Ombudsman's Office or county justice or mediation centers.

Link the Americans with Disability Act, which ordinarily applies to public accommodations, to the Fair Housing Act and apply both to homeowners associations.

- **Provide that violation hearings must be conducted in small claims court**, and that no liens may be placed on property for unpaid fines for at least 4 months. Why affect property values?

- **Place a permanent cap of \$600 on any uncured violation**. Imagine the savings for an RV owner parking a rig in front of his home rather than an off-site facility.

- **Freeze foreclosure notices of sale** until at least 6 months after the account of the unit's owner first had a past due balance or the date on which the past due obligation exceeds \$500.

- **Make all payment plans 12 to 24 months** with a flat fee of no more than \$100 to monitor the payments. If it exceeds \$100 do all owners help pay the bill?

- **Do not send initial assessment delinquency notice until 60 days past due**. This deprives the responsible owner of timely notice in case of an oversight.

- **Assign the rights guaranteed in the Magna Carta (1215 A.D.) to HOA unit owners**. Left unsaid was the relevance to the 21st Century.

- Similarly, inappropriately **equate "equal rights" protections under the 14th Amendment to affida-**

See CORNER on Page 7

'Call Before You Dig' applies to associations, too

Accidents may cost homeowners when boards don't comply

By **CRAIG ROGERS**

PUCN GAS PIPELINE ENGINEER

Nevada Public Utilities Commission staff recently were made aware of an issue regarding excavation-related damage to underground irrigation lines. Although it occurred along a public roadway, the affected area included the landscaping of a homeowners association.

The Southern Nevada project resulted in extensive and costly damage because an HOA-owned water line was not marked before excavation began. The reason? The HOA was unaware that it owned a line in that location.

Sadly, it wouldn't have been that hard for the association to find out. A simple phone call would have revealed the exact location of the line.

This does not appear to be an isolated case. Other associations have discovered they own underground utility lines, including water, sewer, natural gas and electric, only after the damage was done.

As owners or "operators" of a utility line, associations must follow Nevada's "811 Call Before You Dig" requirements. Noncompliance makes the HOA responsible for repair costs if HOA-owned utility lines are not marked before excavation and are damaged during excavation.

As fiduciaries for their associations, board members, association officers and community managers have an obligation to prevent damage to association property and protect the assets of the association.

Historically, the water irrigation lines were installed by the community developer to serve the various landscaped areas from a single meter. These lines were later taken over by the HOA once the community was fully developed. This configuration reduced water service costs by decreasing the number of water meter charges incurred, but created a buried utility system that makes the owner/operator, in this case the HOA, subject to 811 requirements.

811 is a toll-free number for the system used to coordinate the locating and marking of buried utility lines before an excavation project. This includes not only major projects such as water mains, but small ones, such as planting a tree, building a fence, trenching and digging a ditch. The goal of 811 is safety — to prevent property damage, personal injury, damage to buried utility lines, and environmental damage.

Using the 811 system is required by law per Nevada Re-



Just as homeowners need to know where their utility lines are, so do HOAs.

vised Statutes Chapter 455, which may be found at <http://www.leg.state.nv.us/NRS/NRS-455.html>, and Nevada Administrative Code Chapter 455, <http://www.leg.state.nv.us/NAC/NAC-455.html>.

If utility line owners fail to mark or locate lines in accordance with 811 procedures, they will be responsible for all repairs, including costs to repair the damaged lines and any resulting property damage, and may be subject to other penalties.

Following are some suggestions for associations planning on any kind of excavation:

1. Research the plats and plans of the association to find out what underground lines the association owns.
2. If you confirm that the association is an owner/ operator, consider becoming a member of Nevada's 811 Association of Operators. There is a fee to join.
3. Develop a procedure for locating and marking underground lines.
4. If you plan to excavate, call 811 two full working days before digging and learn how to follow 811 procedures for excavating.
5. If you believe that an excavator or operator is not following 811 procedures or that your underground lines were damaged, please immediately contact Craig Rogers in Southern Nevada at (702) 469-6733, or Jason Dunphy in Northern Nevada at (775) 443-8968.

The above information is only a short overview of certain aspects of the 811 system. Associations that are interested in additional information are encouraged to contact Dawn Rivard, consumer outreach director for the Public Utilities Commission of Nevada, at (702) 486-7214 or mdawn@puc.nv.gov.

A teacher at heart

Retiree joins Ombudsman to pursue passion

Some people have it naturally, athleticism, intellect, perfect pitch – a talent that makes them stand out. Ken Richardson, who recently joined the staff of the Ombudsman's Office, has a more subtle gift: a breezy earnestness and ability to establish instant rapport. He just has an easy way about him.

Ombudsman Kara Jenkins saw great potential from the moment Ken arrived for his interview to become the Program Training Officer. The position entails lots of live teaching of a complicated subject to a diverse audience and requires clear communication. It helps if the person is genuinely interested in helping his intended audience. His background was impressive, but his natural demeanor won the day.

"Everyone liked him right away," Kara said. "He brought warmth to what can be a dry presentation and came across as very sincere. His voice is one of patience, clarity and kindness. He has that classic Southern

charm."

Ken had a lengthy career in the health care field, including 16 years as chief executive officer of a nonprofit that coordinates organ donation. Upon retirement, he wanted to pursue his lifelong interest in teaching.

"Teaching is something I've wanted to do for a long time," Ken said.

"Many years ago I was a teacher. I would speak on the ethical issues of organ transplantation (to health care professionals). I like public speaking. When I saw this opportunity (with the Ombudsman), I was very enthusiastic about it. I'm eager to get started."

Ken spent his first several weeks becoming familiar with NRS 116 and association practices, but will begin assisting with presentations in April. By summer, he is expected to be teaching on his own.

"Ken is such a great fit," Kara said.

"It was so easy to picture him in this role. I have no doubt our clientele will like him, too."

Originally from Kentucky, Ken ob-



Ken Richardson headed an organ donation nonprofit organization until retirement. He took a position with the Ombudsman's Office because he always wanted to teach.

tained a bachelor's in psychology from University of Louisville, a master's in counseling psychology from Spalding University, and a master's of business administration from Bellarmine University.

Ken and his wife, Jan, live in western Las Vegas with their rescued dog, Socks. Their daughter, Meredith, is a

Different problems call for different solutions

Ombudsman's Office helps public understand options under law

When a person comes to the Ombudsman's Office for the first time seeking a resolution to a dispute, it can be a bit confusing. The office and its parent agency, the Real Estate Division, administer 3 different programs to assist those who have a dispute within their association.

The first job for staff is to help the visitor determine what services they desire and to explain the procedure for using each, according to Nicholas R Haley, education and information officer for the Ombudsman's office.

"Most people coming off the street aren't going to be experts on NRS 116 and association governance, nor should they be expected to be," he said. "We can't tell visitors what service is right for them, but we do want to ensure they know how each process works, understand their options are and know how they can proceed."

The three dispute resolutions services within the Ombudsman's Office are the Intervention Affidavit, Alternative Dispute Resolution and the Statement of Fact.

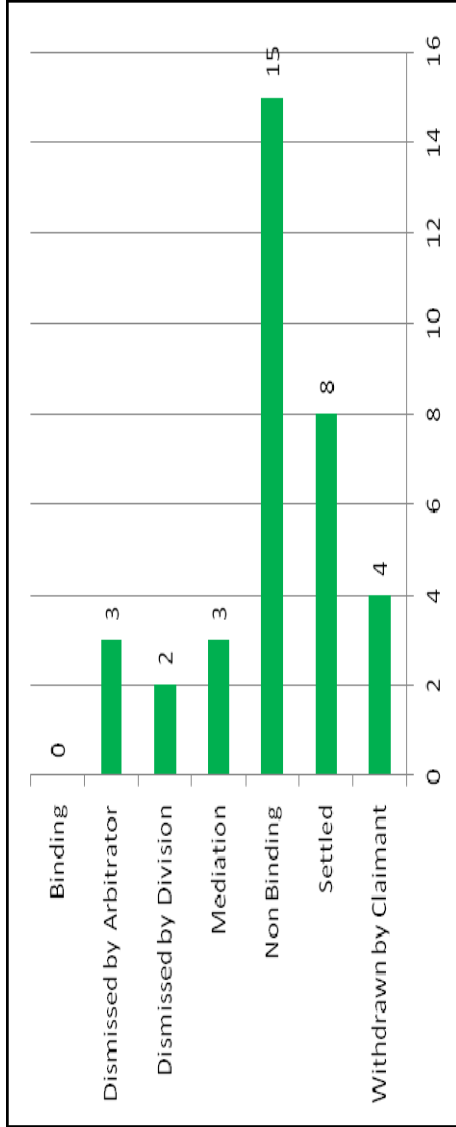
Not all disputes fit into one of these three categories. Disputes involving crimes, Fair Housing issues, predatory lending, or other matters not covered by NRS 116 may require staff to refer the client to another agency.

"To the extent we can, we try to help people find assistance, even if it isn't from us," Haley said.

Don't know where to start? The Ombudsman's recommends the following:

- If the issue involves a crime, contact the police.
- For other matters, try to resolve the problem directly and as early as possible. It is almost always better if problems are solved as locally as possible and as early as possible. Keep a record of communication with the other party.
- Come to the Ombudsman prepared. Assemble all relevant documents, including letters, notices, etc.
- The Ombudsman processes are governed by law. It is essential to learn how to follow each step. The Ombudsman staff will help explain how to use its processes. They will not, however, advise you as to which course of action is best for you.

Alternative Dispute Resolution Claims From September 1, 2011 to December 31, 2011



NOTE: For a summary of Alternative Dispute Resolution decisions, visit www.red.state.nv.us, go to the Common-Interest Communities and Condominium Hotels page, search by year and click on the case number of a decision.

DATE OPEN	DATE CLOSED	CLAIM	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
01-11-11	09-01-11	11-44	Association	Non Binding	Delinquent Assessments	Arbitration found in favor of Association. Homeowner did not participate. Association awarded \$18,991.86; \$14,977.05 in assessments and \$4,014.81 in attorney costs.
08-16-10	09-02-11	11-14	Association	Dismissed by Arbitrator	Delinquent Assessments	Dismissed by Arbitrator
10-13-10	09-08-11	11-26	Homeowner	Mediation	Improper Collection of Fees	Mediation
04-20-11	09-08-11	11-79	Association	Non Binding	Delinquent Assessments	Arbitration found in favor of Association. Association awarded \$25,065.77: \$14,700 in fines, \$5,919.47 in assessments, \$2,280.90 in attorney costs and \$2,165.40 in arbitration costs.
06-09-10	09-13-11	10-97	Homeowner	Settled	Home Put Into Foreclosure Improperly	Settlement
06-28-10	09-13-11	10-107	Homeowner	Settled	Enforcement of Governing Documents	Settlement
06-28-10	09-13-11	10-108	Homeowner	Settled	Fines	Settlement
08-02-10	09-13-11	11-10	Association	Settled	Parking	Settlement
08-23-10	09-13-11	11-15	Homeowner	Non Binding	Amendments to Governing Documents	Arbitration found in favor of Association. Both sides pay own costs.
05-02-11	09-13-11	11-81	Homeowner	Withdrawn by Claimant	Collection of Fees Improperly	Withdrawn by Claimant.
03-04-10	09-14-11	10-65	Homeowner	Settled	Enforcement of Governing Documents	Settlement
04-23-10	09-14-11	10-78	Homeowner	Non Binding	Fines	Arbitration found in favor of Homeowner. Association to reimburse Homeowner \$50,000 for penalties and fines.
01-05-11	09-22-11	11-45	Homeowner	Non Binding	Additional Assessments	Split Decision. Each side pays half of Arbitration costs: \$1993.43. Homeowner to pay Association \$7,500 in attorney fees and \$378.57 in costs.

Alternative Dispute Resolution Claims From September 1, 2011 to December 31, 2011 (cont.)

DATE OPEN	DATE CLOSED	CLAIM	FILED BY	TYPE OF RESOLUTION	NATURE OF CLAIM	DISPOSITION
10-14-10	09-29-11	11-27	Homeowner	Settled	Property Damage	Settlement
06-15-11	10-05-11	11-94	Homeowner	Withdrawn by Claimant	Enforcement of Governing Documents	Withdrawn by Claimant
07-15-11	10-05-11	12-01	Homeowner	Withdrawn by Claimant	Fines	Withdrawn by Claimant
04-12-11	10-07-11	11-74	Homeowner	Settled	Additional Assessments	Settlement
07-29-11	10-19-11	12-02	Homeowner	Dismissed by Arbitrator	Fines	Dismissed by Arbitrator
08-26-11	10-21-11	12-08	Association	Withdrawn by Claimant	Enforcement of Governing Documents	Withdrawn by Claimant
09-07-11	10-24-11	12-11	Homeowner	Dismissed by Division	Property Damage	Dismissed by Division - Improper Service
11-12-10	11-01-11	11-35	Homeowner	Non Binding	Improper Collection of Fees	Arbitration found in favor of Homeowner. Association to reimburse Homeowner \$956.90 in assessments.
11-18-10	11-02-11	11-37	Homeowner	Non Binding	Improper Collection of Fees	Arbitration found in favor of Homeowner. Association to reimburse Homeowner \$1,108.87 in assessments.
04-01-11	11-04-11	11-66	Association	Non Binding	Delinquent Assessments	Arbitration found in favor of Association. Homeowner to pay Association \$10,144.49: \$7,073.33 in assessments and fines, \$1,953.30 in attorney costs and \$1,117.86 in arbitration costs.
03-11-11	11-09-11	11-63	Homeowner	Non Binding	Additional Assessments	Arbitration found in favor of Association. Claimant to pay Association \$14,678.05 in attorneys' costs and fees. Each side pays their own arbitration costs of \$1,350.
10-14-10	11-10-11	11-28	Association	Non Binding	Maintain Landscape/Property	Arbitration found in favor of Association. Owner did not participate. Owner to pay Association \$5,073.51: \$3,743.51 in attorneys costs, \$1,300 in arbitration fees and \$300 to the manager.
09-24-10	11-17-11	11-21	Homeowner	Non Binding	Parking	Arbitration found in favor of Association. Homeowner did not participate. Homeowner to pay Association \$5685.72 in attorney costs and Arbitrator \$900 in fees.
06-06-11	11-17-11	11-92	Homeowner	Non Binding	Enforcement of Governing Documents	Arbitration found in favor of Association.
04-13-11	11-18-11	11-75	Homeowner	Mediation	Enforcement of Governing Documents	Mediation
04-05-11	12-05-11	11-72	Homeowner	Settled	Collection of Fees Improperly	Settlement
11-03-11	12-05-11	12-35	Homeowner	Dismissed by Division	Unknown	Dismissed by Division. Claimant did not supply required info.
05-13-11	12-06-11	11-83	Homeowner	Non Binding	Failure to Perform Fiduciary Duties	Arbitration found in favor of Homeowner. Association to reimburse Homeowner \$300 for arbitration fees.
06-17-11	12-08-11	11-95	Homeowner	Mediation	Architectural Requirements	Mediation
06-02-11	12-13-11	11-91	Homeowner	Non Binding	Fines	Arbitration found in favor of Association. Homeowner did not participate in arbitration.
01-20-11	12-20-11	11-46	Homeowner	Dismissed by Arbitrator	Collection of Fees Improperly	Dismissed by Arbitrator
04-27-11	12-22-11	11-80	Association	Non Binding	Delinquent Assessments	Arbitration found in favor of Association. Homeowner to pay Association \$8,214.62: \$5,394.32 in assessments, \$2,520.30 in attorneys' costs and fees, and \$300 in arbitration fees.

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

The Enclave HOA, Barry Zabo, Natalie Oakley and Bernard Hall Case No. IS 10-2056, November 2011 Board of Directors

Factual Allegations

On Oct. 21, 2009, The Enclave Homeowners Association sent Tyler Properties LLC a statement of charges due, which encompassed 9 months of assessments to enforce the lien that had been accelerated on Sept. 21, 2009. The foreclosure in violation of NRS 116.3116 on the date of acceleration only allowed the collection of 6 months of assessments.

Violations of Law

Respondents violated NRS 116.3116 by charging 9 months of assessments and fees on the property because, as of the date of the super-priority, only 6 months of assessments and fees were collectable under the law.

Settlement

1. Respondents agree that only 6 months of assessments are due. Respondents also agree that the homeowner will not be liable for any fees and costs associated with the collection of assessments due for the 3 months in excess of the 6 months due;
2. The Division agrees not to pursue any other greater remedies in connection with the conduct referenced herein;
3. Respondents and the Division agree that by entering into this stipulation, the Division does not concede any defense or mitigation Respondents may assert, and the parties agree that once this stipulation is approved and fully performed, the Division will close its file in this matter. Respondents understand that public records law may require the Division to make available for inspection this stipulation and related documents, which may also be made available to any governmental, profes-

Actions/Decisions

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

Allegations/Stipulations

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

4. Respondents agree and understand that by entering into this stipulation, they waive their rights to a hearing at which Respondents may present evidence in their defense and be represented by counsel, to judicial review of any adverse decision by the Commission, and present their defense to a Commission, which has had no prior familiarity with the instant matter. The Commission members who review this matter for approval of this stipulation may be the same members who ultimately hear the Division's complaint if this stipulation is either not approved by the Commission or is not timely performed by the Respondents;
5. The Division reserves the right to publish a summary of this stipulation and related facts in "Community Insights" and the Division's Web site;
6. Each side shall bear its own attorney fees; and
7. Even if an attorney is present on behalf of the Respondents, at least one of the respondents must attend the Commission meeting wherein this stipulation will be presented to the Commission, and the Respondents recognize that the Commission has the authority to ask questions regarding the issues set forth herein.

Corner

Continued from Page 2

vit filings in the Ombudsman's Office.

- **Transfer Ombudsman's duties to the "control" of the Attorney General's Office**, including raising the per door fee to \$8 since more "duties" would create a financial impact. This doesn't deserve a serious response.

- **Rather than have a unit owner pay for an ARC plan review by a professional, let all owners pay via assessments**, means all owners are subsidizing one.

- **Permit owners, not the volunteer neighbors**

elected to a board, to decide if assessments must be raised because "only in an HOA people can't vote against a TAX increase." This is patently false, of course.

- **Advocate that punitive damages (rarely covered by insurance) should be permitted against the association, directors and officers** of the association means volunteer leaders will be a scarce commodity.

- **Establish a legislative oversight committee** to "review complaints by the public concerning the CCICCH, the Office of the Ombudsman and the compliance division of the NRED" lacks support.

Forms Forum

Hotel units owners register separately from condo hotel

Hotel units, the core of condominium hotels forming its shared components and key management, must now register with the Ombudsman. All hotel units are required to submit Form 667, Hotel Unit Owner Annual Registration, within its 45-day registration period, which coincides with its associated condo hotel's registration.

The new form, which can be found on the Real Estate Division's Web site under Forms, requests contact information as well as data relating to budgets, reserve funding and audits, which are required pursuant to regulation R186-07, which went into effect May 5, 2011.

Unlike condo hotels, there is no fee that must accompany the hotel unit's registration.

The regulation, the first created under NRS 116B, also creates standards of practice for board members, adopts an accounting reference guide, establishes reserve and financial reporting requirements, defines certain terms, sets price caps on resale packages and limits gifts receivable by certain personnel.

Attention CAMs

Online renewal under way

The Real Estate Division's Licensing section began accepting online renewal applications from community managers last fall, according to Licensing Manager Susan Clark.

The system allows for submission of the renewal application and payment online. Applicants must answer the same questions as they would in person. In addition, applicants must list the continuing education courses they attended, including CE number and date.

Managers wishing to "upgrade" their certificates, such as changing from provisional to regular community manager, must apply in person.

To renew online, visit www.red.state.nv.us. On the right side of the page under Quick Links, select Online Renewals and follow the instructions. Applicants must use Internet Explorer and have a credit card ready. Also note the instruction for obtaining a user name and password is to select the forgotten password link.

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