

COMMUNITY INSIGHTS

VOLUME VI, ISSUE II

Department of Business and Industry, Real Estate Division

Spring 2010

**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 in handling issues that may arise while living in a common-interest community.

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**Education outreach
Basics for Board Members**

Las Vegas

6/12, Summerlin Library
7/27, Bradley Building

North Las Vegas

6/9, Aliante Library

Pahrump

6/16, Bob Ruud Community Center

Carson City

7/12, Business & Industry building

All HOA residents welcome. Call Nicholas Haley at (702) 486-4480 for registration, times and more information.

From the Ombudsman's Desk

Information, mediation, compliance



By LINDSAY WAITE
OMBUDSMAN

The Office of the Ombudsman has a diverse client base and a range of services. While we take every opportunity to explain our services,

we realize many people have limited interaction with us and may not realize all that we do. For all who wonder what an Ombudsman's Office does, we'd like to give you a brief overview:

- Since the inception of the Ombudsman Informal Conference Program in August 2006, there have been more than 1,190 Intervention Affidavits filed, 284 conferences held, and 165 disputes resolved by the Ombudsman. ...
- There is no cost to file an Intervention Affidavit. The law requires, however, that you inform the party with whom you have a dispute via certified mail, return receipt requested, of your areas of concern – that is, the allegations of violations of governing documents or violations of law. The allegations in the affidavit should match those in the letter. The Ombudsman cannot provide informal mediation or investigate violations of law without receiving an Intervention Affidavit. Thus, anonymous complaints do not

spark investigations. ...

- If you believe you don't know how to complete the affidavit, are fearful of retaliation for filing an affidavit, and/or have any questions about the process, you can call the office on any weekday, or meet with a Compliance Investigator on any Tuesday, Wednesday or Thursday, to talk about your concerns. ...
- This office averages 800-900 calls per month, and the compliance investigators (David Garrick, Chris Cooke and Cheryl Fleming) meet with approximately 30 homeowners and/or board members per month. ...
- Other staff members address general questions from the public regarding Intervention Affidavits, including Sonya Meriweather, Victoria Broadbent, Maria Martin and Rhonda Galvin. In addition, Sonya Meriweather, with assistance from John Sarff and Megan Roller, responds to inquiries from the public regarding registration requirements. Gordon Mildren assists with questions about the Alternative Dispute Resolution process. ...
- In communities where problems have brewed for a number of years, the staff at the Office of the Ombudsman provides ongoing assistance for boards and owners in complying with NRS 116. Sometimes this means that staffers are continually contacted by phone, email or mail so that the communities can function in accordance with the law. ...
- Education outreach efforts have expanded. Lindsay Waite, Nick Haley, Sonya Meriweather, Ingrid Trillo and other staffers teach on subjects ranging from the 2009 legislative changes

See **DESK on Page 3**

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

Dianne Cornwall
Director

REAL ESTATE DIVISION

Gail J. Anderson
Administrator

OFFICE OF THE OMBUDSMAN

Lindsay Waite
Ombudsman

Nick Haley
Editor

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

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

CARSON CITY OFFICE
1179 Fairview Drive
Carson City, Nevada 89701-5433
(775) 687-4280
<http://www.red.state.nv.us>

**COMMISSION FOR
COMMON-INTEREST COMMUNITIES
AND CONDOMINIUM HOTELS**

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Jeannie Redinger, Vice Chairman
Community Manager Member

Marilyn Brainard, Commissioner
Homeowner Member

Gary Lein, Commissioner
Certified Public Accountant Member

Randolph Watkins, Commissioner
Developer Member

Donna Toussaint, Commissioner
Homeowner Member

M. Favil West, Commissioner
Homeowner Member

Commissioner's Corner

The big picture



By **MICHAEL BUCKLEY**
COMMISSION CHAIRMAN

It's a bit hard to remember back that far, but after I graduated from law school one of the things I most wanted to do was to help people understand the law. When I attended in the '70s, one mostly studied the common law, that is, court decisions that developed in England in the centuries before the United States became a country.

After three years, the whole enterprise made sense. In one sense, law is nothing more than a record, through judicial decisions and statutes, of how we as societies protect certain interests and correct or compensate for mistakes, for example personal injuries suffered at the hand of another or the meaning of confusing language in a will or deed.

Thus the concept of negligence developed the idea that actors, whether individuals or companies, have certain duties to those acted upon; and when those duties are violated, those who have been hurt may recover damages. In this process, value judgments are made. Sometimes an activity is one we as a society try to protect because we value it more than the risk of injury.

For example, many states have laws that protect the "good Samaritan" who comes to the aid of someone in trouble. Other times we spread the cost of injury around. Many states developed the concept of "strict liability" by which a manufacturer is liable for all injuries arising from a defective product, regardless of fault, and those liabilities are simply added to the cost of the product, so that everyone pays a little more.

That brings me to NRS Chapter 116.

In spite of, or perhaps because of, the best of intentions, NRS 116 exists today not just as a framework of basic rules for the creation and operation of homeowner associations, but as an exhaustive list of "dos and don'ts" that address behavior in very detailed ways. Lawyers are familiar with the expression, "bad facts make bad laws," meaning that in a particularly egregious case, when a person has been seriously injured or harmed, a legislature or a court will bend over backward to try to help that person. Many times the resulting statute or decision is not one that makes sense when broadly applied to the larger population.

Recently, I listened to debates about the meaning or interpretation of particular provisions in NRS 116; certainly one of the problems faced by not only homeowners and managers, but the Commission and the Division, is

See CORNER on Page 3

Commission adds two members



Favil West, above, and Donna Toussaint, left, joined the Commission on Common-Interest Communities and Condominium Hotels last October.

The Commission for Common-Interest Communities and Condominium Hotels saw its membership ex-

panded last year with the appointment of M. Favil West and Donna Toussaint.

The two were seated at the October 2009 meeting, joining Marilyn Brainard of Sparks as the three homeowner members. Toussaint is a resident of The Lakes in the western portion of the Las Vegas Valley. West is a resident of Sun City Anthem in Henderson.

"This is an exciting time (to serve). There are a lot of issues for the Commission to address," Toussaint said.

The 2009 Legislature increased the size of the Commission to seven members with two additional homeowner members.

Already West and Toussaint have taken active roles in meetings, commenting on disciplinary and regulatory hearings.

"I look forward to getting down to business," West said.

Desk

Continued from Page 1

to fiduciary duties to the forms, programs and processes of the office, to name just a few of the subjects covered. ...

- This office provides a valuable service to common-interest communities. By assisting in resolving problems, we have stopped problems before they get to the courts or lawmakers. When people who previously did not see eye-to-eye can shake hands and walk out with problems resolved, it can reduce the stress levels and misery not only of the participants personally, but sometimes communitywide.

The office also has been instrumental in advising communities on how to avoid receivership. By ensuring that the law is understood and enforced, the office assists communities in functioning in an orderly fashion.

Finally, by trouble-shooting particularly thorny issues on a fast-track basis (allegations of financial mismanagement, foreclosures, and serious health and safety allegations), the office keeps manageable problems from growing into larger, more complicated ones.

Corner

Continued from Page 2

the ever growing complexity of the law.

As Commissioners we deal with these issues once in awhile, but we also recognize that board members, homeowners and managers encounter them every day. Some have the benefit of competent counsel. Many, however, do not.

Because of the complexity of NRS 116, especially when coupled with a lengthy declaration, interpretation is not always easy or certain. There are, no doubt, provisions in NRS 116 that conflict with one another. The Commission has seen arbitrators come to different conclusions.

This sort of brings me back to my original point. NRS 116 is indeed complex, but there is a basic sense to it. While lawyers, judges, arbitrators, commissioners and administrators may disagree over the meaning of particular provisions in the law, certain overarching principles of NRS 116 are clear: homeowners need adequate information about their association, executive board members need the tools to manage effectively and management must be conducted openly and with appropriate homeowner participation.

Almost every addition to Article III of NRS 116 (Management of Common Interest Communities) has risen in response to a violation of these basic principles. I greatly doubt, however, that the Commission has ever heard a case centered upon whether the respondent's interpretation of a statute or the Division's was correct.

As in other areas of law, certain activities are valued and protected. Thus, decisions of volunteer board members acting in good faith to understand their duties, are protected from being second-guessed by the business judgment rule.

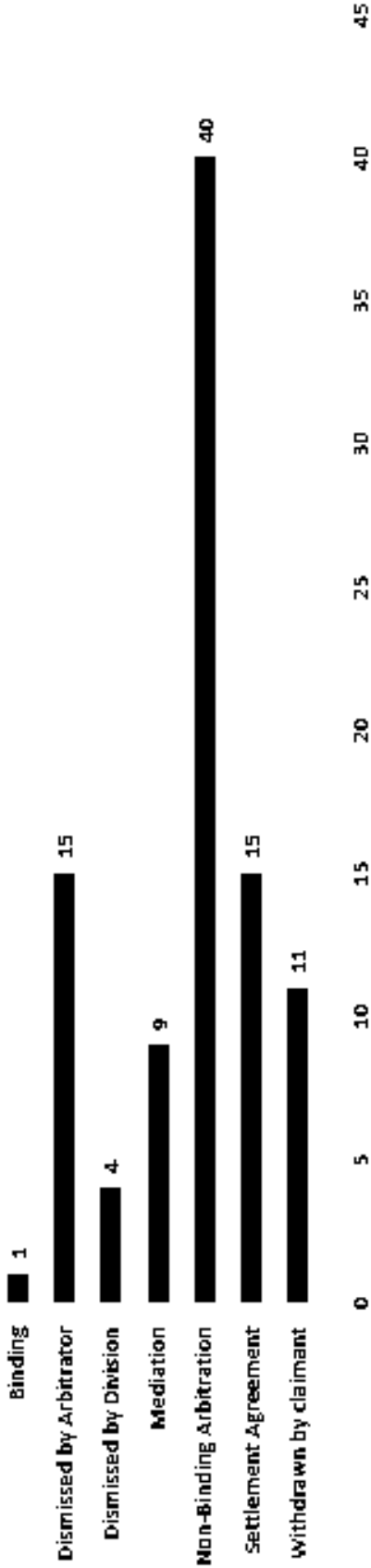
More than once we have seen cases at the Commission where a board member, acting on the noblest intentions, crossed a line that should not have been crossed. Yet, in almost every case that person either ignored or chose to not follow the law and the transaction was not concluded in an open and above-board manner. Even volunteers will not be protected if they have made no effort to understand the responsibilities they undertake.

A final point: an association, like any democracy, operates as a two-way street. Responsibilities exist for both the governed and those who govern. Thus, while the law punishes some wrongdoers, sometimes it spreads the risk.

When the Commission finds a violation of NRS 116 has occurred, the penalty may be spread among all the members of the association, or just on the wrongdoer if the Commission determines that the violation is knowing and willful. This is important for homeowners to remember. The penalty for poor management falls not just on the bad board members but on all owners.

Let's try to un-complicate things a bit.

Alternative Dispute Resolution Claims from 06-01-09 to 02-28-10



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.

CLAIM #	DATE OPEN	DATE CLOSED	NATURE OF CLAIM	FILED BY	DISPOSITION	DETAILS
09-03	07-09-08	06-04-09	Property Damage	Homeowner	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner to reimburse association \$450 in arbitrator fees and \$2,463.76 in attorney's costs.
09-33	09-30-08	06-04-09	Enforcement of Governing Documents	Homeowner	Non-Binding Arbitration	Association awarded \$7,255.19 in fines and \$45,000 in attorney's costs.
09-53	11-20-08	06-16-09	Enforcement of Governing Documents	Homeowner	Non-Binding Arbitration	Arbitration found in favor of association. Each side to pay for its own costs.
06-80	06-21-06	07-01-09	Fines	Homeowner	Non-Binding Arbitration	Homeowner to reimburse association \$12,276.46; \$8,832.46 in attorney's costs and \$3,444 in arbitrator fees. Homeowner is responsible for own attorney's costs.
09-85	02-10-09	07-06-09	Governing Documents (budget ratification)	Homeowner	Non-Binding Arbitration	Homeowner to reimburse association \$22,109.62; \$13,673.50 in attorney's costs, \$5,980 in arbitrator's fees, \$2,000 in management company fees and \$456.12 in postage, courier, faxing and copying costs.
09-23	09-12-08	07-09-09	Access to Records	Homeowner	Non-Binding Arbitration	Split Decision. Each side paid \$3,152.94 in arbitrator's costs and each side is responsible for its own costs.
09-09	07-31-08	07-14-09	Enforcement of Governing Documents	Homeowner	Non-Binding Arbitration	Association is awarded \$13,196.74; \$12,099.78 in attorney's fees and \$1,096.96 for landscape repairs.
09-25	09-15-08	07-16-09	Property Damage	Homeowner	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner to reimburse association \$11,264.17; \$1,126.26 in repairs, \$3,723.41 in arbitration costs and \$6,414.50 in attorney's fees.
09-27	09-22-08	08-05-09	Maintain Landscape/Property	Homeowner	Non-Binding Arbitration	Homeowner to reimburse association \$13,538.72; \$1,525.22 in arbitration fees and \$12,023.50 in attorney's fees.

Alternative Dispute Resolution Claims from 06-01-09 to 02-28-10 (Cont.)

CLAIM #	DATE OPEN	DATE CLOSED	NATURE OF CLAIM	FILED BY	DISPOSITION	DETAILS
09-91	03-10-09	08-10-09	Harassment	Homeowner	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner to pay association \$17,670.89; \$17,220.89 in attorney's fees and \$450 in fines.
09-99	03-26-09	08-10-09	Maintain Landscape/Property	Association	Non-Binding Arbitration	Homeowner to pay association \$16,641.79; \$1,303.33 in arbitration fees, \$2,438.46 in attorney's fees and \$12,900 in fines.
09-112	05-18-09	08-27-09	Non-payment of assessments	Homeowner	Non-Binding Arbitration	Homeowner to reimburse association \$3,953.81; \$938.21 in charges and collections fees, \$1,453.00 in attorney's fees, \$1,562.60 in arbitration fees.
08-110	05-12-08	09-02-09	Maintain Landscape/Property	Association	Non-Binding Arbitration	Homeowner to pay association \$27,446.60; \$19,500 in fines and fees, \$5,934.94 in attorney's fees and \$2,011.66 in arbitration fees.
08-128	06-26-08	10-05-09	Fines	Homeowner	Dismissed by Arbitrator	Dismissed by Arbitrator. Homeowner to reimburse association \$9,960.21; \$6,660.21 in attorney's fees and \$3,300 in arbitration fees.
09-06	08-08-08	10-05-09	Maintain Landscape/Property	Association	Non-Binding Arbitration	Default judgment. Association is awarded \$17,686.84; \$4,400 in fines and costs, \$12,386.84 in attorney's costs and \$900 in arbitration fees.
09-07	08-08-08	10-05-09	Maintain Landscape/Property	Association	Non-Binding Arbitration	Association is awarded \$20,736.32; \$2,200 for fines and liens, \$17,336.32 for attorney's costs and \$1,200 for arbitration fees.
09-47	11-14-08	10-07-09	Governing Documents/Access to Common Areas	Association	Non-Binding Arbitration	Association awarded \$7,037.77; \$5,200 in fines, \$1397.77 for attorney's costs and \$440 in arbitration fees.
09-65	12-12-08	10-16-09	Delinquent Assessments	Association	Non-Binding Arbitration	Arbitration found in favor of association. Homeowner to pay \$11,401.24; \$2,641 in assessments and late fees, \$6,140.24 in collections and attorney's fees, and \$2,650 in arbitration fees.
09-116	05-28-09	10-16-09	Maintain Landscape/Property	Association	Dismissed by Arbitrator	Dismissed by Arbitrator. Homeowners in ongoing bankruptcy status.
09-101	04-03-09	10-19-09	Maintain Landscape/Property	Association	Dismissed by Arbitrator	Dismissed by Arbitrator. Homeowners in ongoing bankruptcy status.
09-76	01-12-09	10-22-09	Maintain Landscape/Property	Homeowner	Non-Binding Arbitration	Split decision. Each side pays for its own fees. Each pays \$3,620 for arbitration fees.
09-98	03-24-09	10-27-09	Maintain Landscape/Property	Association	Dismissed by Arbitrator	Dismissed by Arbitrator. Homeowners in ongoing bankruptcy status.
10-16	09-01-09	10-27-09	Additional Assessments	Homeowner	Dismissed by Division	Dismissed by Division due to lack of service.
09-84	02-09-09	11-02-09	Property Damage	Homeowner	Non-Binding Arbitration	Homeowner is awarded \$249.18.
09-87	02-23-09	11-03-09	Parking	Homeowner	Dismissed by Arbitrator	Homeowner to pay association: \$12,507.60; \$10,215 in attorney's fees, \$480 in management fees, \$1051.24 in arbitration fees and \$761.36 in copy costs.
09-106	04-22-09	11-03-09	Additional Assessments	Association	Binding Arbitration	Homeowner to pay association \$173,837.25; \$108,650 in penalties and \$65,187.25 in interest.
10-09	07-27-09	11-04-09	Maintain Landscape/Property	Homeowner	Non-Binding Arbitration	Homeowners to pay \$518.77 in arbitration fees and to reimburse association for \$50 ADR filing fee.
09-119	06-17-09	11-06-09	Maintain Landscape/Property	Association	Non-Binding Arbitration	Homeowner to pay association \$36,131.01; \$22,500 in fines, penalties and charges; \$9,649.00 in attorney's fees; and \$3,982.01 in arbitration fees.
09-107	05-04-09	11-09-09	Fines	Homeowner	Non-Binding Arbitration	Homeowner to pay association \$6,418.41; \$1,700.15 in fines, \$2,302.26 in arbitration fees and \$2,416 in attorney's fees.

Alternative Dispute Resolution Claims from 06-01-09 to 02-28-10 (Cont.)

CLAIM #	DATE OPEN	DATE CLOSED	NATURE OF CLAIM	FILED BY	DISPOSITION	DETAILS
10-28	10-20-09	11-13-09	Delinquent Assessments	Association	Withdrawn by Claimant	Withdrawn by association. Chapter 7 bankruptcy
09-113	05-19-09	11-20-09	Delinquent Assessments	Association	Non-Binding Arbitration	Homeowner to pay association \$79,648.54; \$43,075 in fines. \$11,786.49 in assessments, \$20,000 in attorney's fees and \$4,787.05 in arbitration costs.
09-18	08-20-08	11-23-09	Property Damage	Association	Non-Binding Arbitration	Arbitration found in favor of homeowner. Each side pays its own fees.
09-110	05-12-09	11-24-09	Enforcement of Governing Documents	Homeowner	Non-Binding Arbitration	Association to pay homeowners \$19,599.23; \$17,325.48 in attorney's fees and \$2,273.75 in arbitration costs.
10-06	07-09-09	11-24-09	Delinquent Assessments	Association	Non-Binding Arbitration	Homeowner to pay association \$12,996.90; \$12,311.90 in assessments, \$135 in service fees, \$50 for the NRED filing fee and \$500 in arbitration costs.
10-07	07-09-09	11-24-09	Delinquent Assessments	Association	Non-Binding Arbitration	Homeowner to pay association \$4,895.90; \$4,255.90 in assessments, \$90 in service fees, \$50 for the NRED filing fee and \$500 in arbitration costs.
10-08	07-09-09	11-24-09	Delinquent Assessments	Association	Non-Binding Arbitration	Homeowner to pay association \$12,996.90; \$12,311.90 in assessments, \$135 in service fees, \$50 for the NRED filing fee and \$500 in arbitration costs.
09-30	09-25-08	12-02-09	Architectural Rules	Homeowner	Non-Binding Arbitration	Arbitration found in favor of association. Each side pays for its own costs.
10-33	10-23-09	12-21-09	Delinquent Assessments	Association	Non-Binding Arbitration	Withdrawn by association. Settlement.
10-34	10-23-09	12-21-09	Delinquent Assessments	Association	Non-Binding Arbitration	Withdrawn by association. Assessments paid.
10-36	10-23-09	12-21-09	Delinquent Assessments	Association	Non-Binding Arbitration	Withdrawn by association. Property foreclosed.
10-26	10-20-09	12-24-09	Misapplication of assessment payments	Association	Non-Binding Arbitration	Withdrawn by association. Settlement.
10-29	10-20-09	12-24-09	Delinquent Assessments	Association	Withdrawn	Withdrawn by association. Assessments paid.
09-52	02-06-09	01-22-10	Delinquent Assessments	Homeowner	Non-Binding Arbitration	Each side at fault. Homeowner had simple accounting error. association did not follow CC&Rs.
10-20	09-22-09	02-04-10	Delinquent Assessments	Association	Non-Binding Arbitration	Homeowner to pay association \$12,423.30; \$1,045 in assessments, \$406 in late fees, \$533.38 in interest, \$170 in administrative fees, \$520 in reserve assessments, \$2,859.76 in attorney's fees and \$1,289.16 in arbitration costs.
09-93	03-13-09	02-05-10	Home placed into foreclosure improperly	Homeowner	Non-Binding Arbitration	Arbitration found in favor of homeowner. Association to reimburse homeowner \$2,847. Association responsible for all arbitration costs.
10-13	08-24-09	02-05-10	Enforcement of Governing Documents	Homeowner	Non-Binding Arbitration	Arbitration found in favor of association. Homeowners to pay association \$1,762.20; \$1,522.20 for assessments and \$240 in interest and fees.
10-40	10-27-09	02-08-10	Maintain Landscape/Property	Association	Non-Binding Arbitration	Homeowner to pay association \$35,600.50; \$22,800 in fines, \$10,967.06 in attorney's fees and \$1,833.44 in arbitration costs.
10-25	10-16-09	02-09-10	Enforcement of Governing Documents	Association	Non-Binding Arbitration	Homeowner did not participate. Homeowner to pay association \$16,385.41; \$12,500 in fines, \$2,752.08 in attorney's fees and \$1,133.33 in arbitration costs.
09-72	01-06-09	02-16-10	Parking	Homeowner	Non-Binding Arbitration	Arbitration found in favor of homeowner. Association did not follow procedures in CC&Rs for reassigning parking spaces.
09-117	06-03-09	02-16-10	Fines	Homeowner	Non-Binding Arbitration	Evidence provided by homeowner was insufficient to prove association's attempted to deny homeowner's right to defend himself against alleged violations of CC&Rs.
10-46	11-12-09	02-23-10	Fines	Homeowner	Dismissed by Arbitrator	Dismissed by Arbitrator per request of both parties.
09-36	10-20-08	02-23-10	Architectural Requirements	Homeowner	Non-Binding Arbitration	Neither party prevailed. Each side responsible for its own costs and fees.

Staff additions expand Ombudsman services

Ingrid Trillo starts a new chapter within Division

Ingrid Trillo is no stranger to the Real Estate Division or its myriad education programs. Before her departure in January, she was the program officer for the Inspector of Structures and Time Shares sections.

After a month's hiatus, she returned to the Division, only under another chapter of law. Ingrid's new role as of the end of February is training program officer, a position she is fleshing out from scratch.

"It's kind of like I never left home," she said. "It's like going to the same closet and putting on a new outfit."

Ingrid's new outfit is the Ombudsman's Office. She will devise training programs for internal and external clients, and will ultimately be responsible for maintaining a training manual that was mandated by statute during the 2009 Legislative Session.

"It's going to be a step-by-step procedure for everything — elections, meetings, and so on," she said. "It will show how to do it all. I know it's becoming a great tool for me as I learn more about NRS 116.

"Not only that but as procedures change, it will be updated, which is important because that can happen quite frequently.

"NRS 116 can be overwhelming. (The Ombudsman's Office is) trying to make it less so, and I think this manual will help."

In her previous stint with the Division, Ingrid reviewed the educational offerings involving NRS 119A (Time Shares) and NRS 645D (Inspector of Structures), and assisted NRS 119 staff (Projects Registration). She



Ingrid Trillo rejoined the Real Estate Division in March as the training program officer for the Office of the Ombudsman.

looks forward to the challenge of working more closely with external clients, including board members and homeowners, and having a direct role in education. Already, she is taking part in the Outreach program, where the education staff from the office visits various regions of the state.

"The educational seminars are a really good program for this office," Ingrid said. "It's good for people just to be able to interact with this office on a one-on-one basis and to ask questions. I think people feel differently about asking questions in those kinds of settings. They feel more comfortable."

Ingrid has been involved in real estate in some shape, form or fashion for most of her professional life. Before coming to the Division, she worked within the home-building, escrow and title industries — all in the Las Vegas Valley.

Coming to Las Vegas in 1970 from Los Angeles, she graduated from Las Vegas High School and the following year enrolled in the University of Nevada, Las Vegas, where she would later accept a political science degree. She and her husband have three sons, a granddaughter and a dog.

Did you know ... ?

The Real Estate Division recently created a new form: **Statement of Fact Against a Community Manager**. Form 514A, as it is designated, revises language from Form 514 to reflect the statutory requirements specific to a community manager. It also leaves out language that doesn't pertain to NRS 116 complaints. Form 514 is still used for complaints against a real estate licensee. Those who wish to file a complaint against a community manager must start by communicating to the manager in writing the nature of the alleged violations of NRS 116 or NAC 116 in an attempt to resolve the issue. Afterward, the person with the complaint may file Form 514A, providing evidence of the alleged violation, plus evidence of the attempt to resolve the issue with the manager.

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

Regina Serrano
Case No. CIS-09-12-08-105, CIS-09-09-05-041, CIS-09-07-05-005
July 2009
Community Manager

Findings of Fact

The respondent was served with the Complaint and Notice of Hearing, Notice of Complaint, and Notice of Documents by the Real Estate Division to which she failed to respond at all. The respondent failed to appear at the time and place for the hearing of the above case.

Conclusions of Law

The respondent was properly served with the Complaint and Notice of Hearing, Notice of Complaint, and Notice of Documents, was given notice of the hearing, and failed to respond. Pursuant to NAC 116.580, the respondent having failed to respond to the notices and to appear at the hearing, the Commission could accept the charges as true.

Decision and Order

The allegations in the complaint were found to be true and the respondent found guilty of each of the violations alleged in the complaint.

Discipline

1. The respondent's community manager certificate CAM.0001267 is revoked;
2. At any time in the future the respondent seeks to apply for a community management certificate, the application must be brought before the Commission for consideration before issuance;
3. The respondent is ordered to pay a fine of \$5,000 in each case listed above for a total of \$15,000;
4. The respondent is ordered to pay \$2,425 in costs to the Division; and
5. The respondent is ordered to make restitution totaling \$274,553.80 to the

homeowners' associations that suffered damages as a result of the violations. Payments must be paid as follows:

- A. \$1,300 to Sterling at Silver Springs;
- B. \$87,588.80 to The Bluffs Village II HOA;
- C. \$36,160 to Glenwood Village Community Association;
- D. \$91,367 to Montaire Community Association;
- E. \$13,225 to Tantara Unit Owners Association; and
- F. \$44,913 to Legacy Highlands Property Owners Association.

Robert Martin
Case No. IS-07-1539
October 2009
Director

Factual Summary

The respondent was a member of the board of directors for the Sahara Mountain Vista HOA, a common-interest community in Nevada. The complaint alleges the respondent violated NRS 116 with respect to the improper suspension of two unit owners' use of common elements as a result of their alleged violation of association rules in June 2007.

Since that time, the respondent has continued to serve on the board and has completed the following educational courses: "Association Annual Meetings and Elections," "To Be Or Not To Be Reasonable," "Understanding Financials and Budget Preparation," "The ABC's of Contracting Contractors," "Managing Assessment Collections in Today's Market" and "Board of Directors 101."

Stipulated Settlement

1. The respondent is ordered to pay \$400 to the Real Estate Division, \$220 to complainant Gloria Van Cura and \$220 to complainant Beverly Smith;
2. Within 90 days, the Board of the Sahara Mountain Vista HOA will revise the association's rules and regulations to require that before a unit owner's

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.

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

rights to use the common elements may be suspended, the board must provide reasonable notice and a hearing, except when the suspension is being imposed for nonpayment of assessments in which case no hearing will be required;

3. The respondent will complete the one-day free course Basics for Board Members and provide proof of completion to the Division; and

4. The respondent will not apply for temporary certification to manage any common-interest community in Nevada.

Abe Klein and Clint Wellis **Case No. IS-08-1665** **October 2009** **Directors**

Factual Summary

The respondents were members of the board of directors for Coventry Homes at Anthem community association, a common-interest community in Nevada subject to the provisions of NRS 116.

Stipulated Settlement

1. Respondent Abe Klein is ordered to pay a fine of \$500 to the Real Estate Division;
2. Respondent Clint Wellis is ordered to pay a fine of \$250 to the Real Estate Division;
3. Both Respondents understand that a board member must be familiar with Nevada law in effect throughout the time of service on the board; and
4. Both Respondents understand that all candidates for positions on common-interest communities must provide in writing full and complete disclosures of any possible conflict of interest to be provided to members of the community with the ballots for the election.

Barry Floyd **Case No. CIS-09-10-22-072 and** **CIS-09-11-08-087** **October 2009** **Community Manager**

Factual Summary

The respondent was served with the Complaint and Notice of Hearing, Notice of Complaint, and Notice of Documents by the Real Estate Division to which he

failed to respond at all. The respondent failed to appear at the time and place for the hearing of the above case.

Conclusions of Law

The respondent was properly served with the Complaint and Notice of Hearing, Notice of Complaint, and Notice of Documents, was given notice of the hearing, and failed to respond. Pursuant to NAC 116.580, the respondent having failed to respond to the notices and to appear at the hearing, the Commission could accept the charges as true.

Decision and Order

The allegations in the complaint were found to be true and the respondent found guilty of each of the violations alleged in the complaint.

Discipline

1. The respondent's community manager certificate CAM.0006746 is revoked;
2. At any time in the future the respondent seeks to apply for a community management certificate, the application must be brought before the Commission for consideration before issuance;
3. The respondent is ordered to pay a fine of \$5,000 in each case listed above for a total of \$10,000;
4. The respondent is assessed \$1,649 in costs to the Division; and
5. The respondent is ordered to make restitution totaling \$160,346 to the homeowners' associations that suffered damages as a result of the violations. Payments must be paid as follows:
 - A. \$72,504 to Greenbriar Townhouse Owners Association; and
 - B. \$87,842 to Northshore Reflections Homeowners Association.

Thomas Curriere **Case No. IS-05-1231, IS-06-1342** **and CIS-09-03-01-152** **October 2009** **Community Manager**

Factual Summary

The respondent was served with the Amended Complaint and Notice of Hearing, Notice of Complaint, and Notice of Documents by the Real Estate Division. He asserted in correspondence to the Division that he denied

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

the allegations. The cases were continued at the respondent's request from the July 2009 Commission meeting to the October 2009 Commission meeting.

The respondent continued to have a community management certificate. The respondent failed to appear at the October hearing.

Conclusions of Law

The respondent was properly served with the Complaint and Notice of Hearing, Notice of Complaint, and Notice of Documents, and was given notice of the hearing. Pursuant to NAC 116.580, the respondent having failed to respond to the notices and to appear at the hearing, the Commission could accept the charges as true.

Decision and Order

The allegations in the complaint were found to be true and the respondent found guilty of each of the violations alleged in the complaint.

Discipline

1. The respondent's community manager certificate CAM.0001086 is revoked;
2. At any time in the future the respondent seeks to apply for a community management certificate, the application must be brought before the Commission for consideration before issuance;
3. Respondent is ordered to pay a \$14,000 fine to the Division;
4. Respondent is ordered to pay \$2,504 in costs to the Division; and
5. If any amount due is not paid within 6 months from the date of the order, it will be turned over to collections.

Beverly Spiro
Case Nos. IS-09-1721, IS-09-1722
and IS-09-1725
October 2009
Director

Factual Summary

At all relevant times, the respondent was a board member for Tarry Towne Homeowners Association.

In a letter dated May 27, 2008, the board notified unit owner Thomas Metcalfe it was imposing a \$200 fine on him, but did not cite the rule alleged to be violated, or provide any specifics. It stated: "YOU HAVE 10 DAYS TO MEET WITH THE BOARD TO APPEAL THIS."

Before the letter, Metcalfe had not been given the opportunity to correct the alleged violation, and did not have a hearing before the fine was imposed. Further, there are no meeting minutes showing a decision to impose the fine.

Before May 27, 2008, Metcalfe nominated himself as a candidate for a board position in an election. Despite being in good standing, he was told in the May 27 letter: "AND, AS FAR AS YOUR NOMINATION GOES, AT PRESENT THERE IS A CONFLICT." The board and its community manager, Thomas Curriere, refused to place Metcalfe's name on the ballot as a board candidate.

Metcalfe had, before May 2008, expressed to the board and Curriere that he believed they were conducting business out of compliance with NRS 116 and NAC 116. As one of the directors, the respondent participated, either actively or passively, in the acts or omissions referred to above, which included allowing Curriere to be a signatory on the association's reserve account and failing to supervise him adequately.

In 2008 and 2009, Curriere made withdrawals from the Tarry Towne reserve account and misused the funds. Curriere was also a signatory on the association's operating account. The board took no action when he withdrew \$10,000 from the reserve account in October 2008, and did not request an accounting of how the funds were used.

The respondent was also a signatory on the association's bank accounts, even after leaving the board in August 2008. Together with Curriere in 2008 and 2009, she co-signed association checks made out to one another at approximately one-week intervals.

While the respondent served on the board, the association did not hold annual unit owner meetings, the board failed to oversee association finances adequately, and the board paid Curriere to serve as the community manager concurrently while he served as a board member.

The respondent, in her capacity as a board member, failed to enter the association into an appropriate written management agreement with Curriere in conformance with Nevada law, did not establish a written agreement with Curriere to be a signatory on association accounts or state the amount he could charge, and permitted checks to be issued in contravention of the governing documents.

In 2008 and 2009, the respondent was not authorized by the governing documents to be a signatory on the association's bank accounts, but continued to act as one.

The board, including the respondent, permitted Curriere to pay himself using the association bank account for services he personally rendered and for which he was individually responsible.

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

While a board member, the respondent did not disclose that she anticipated payment by the association in 2008, and was not authorized to do so by the board, but did receive payments from the association, which the board did not try to stop.

Also while the respondent was a board member, the board failed to ensure minutes were taken at meetings or maintain minutes of the meetings, failed to have budgets prepared pursuant to Nevada law or obtain unit owners' ratification, and failed to maintain records properly.

Stipulated Settlement

1. Respondent must pay a \$2,500 fine to the Division;
2. Respondent shall not hold a position on the Board of Directors for Tarry Towne Homeowners Association, or any other Nevada CIC;
3. Respondent shall not be employed in any capacity with any Nevada CIC;
4. Respondent shall not accept compensation, directly or indirectly, for providing goods or services to any Nevada CIC, or its board or management;

5. If the respondent attends any Tarry Towne owner or board meeting, she must conduct herself in a polite and civil manner; not speak out of turn; comply with time limits imposed upon owner for public comments, not cause or participate in interruptions of said meetings; not participate in outbursts; and comply with all procedures;

6. Respondent shall comply with all applicable laws and Tarry Towne governing documents;

7. Respondent will not engage in activities of any kind to impede the board's governance of the association.

8. Respondent will not engage in activities of any kind to impede the community manager, his or her employees, or contractors from performing their functions.

9. Respondent will not be abusive, hostile or obstreperous in her dealings with the association's management, board, owners, tenants, guests or the Division.

10. Respondent will not engage in retaliation of any type against the complainants, management, board or Division; and

11. Respondent will not apply for temporary certification to manage a CIC in Nevada.

Division clarifies activities for unlicensed management staff

Company executives and community managers must ensure they have proper policies and procedures in place so that their unlicensed employees do not engage in activities that only community managers are legally allowed to perform.

In June 2009, the Real Estate Division issued Bulletin #017, which details work duties that are clerical in nature and permissible for unlicensed staff to perform at the direction of a community manager or board of directors. This includes very basic information, such as procedures for challenging a board decision, or very basic information on the community.

Matters such as how much is owed on a delinquent account, or why a fine was imposed, must be left to the community manager.

"Much of what unlicensed staff does requires careful training and appropriate supervision," said Sonya Meriweather, Program Officer III for the Office of the Ombudsman.

Many activities may be started by unlicensed staff, but must be completed and signed off on by the association's community manager of record, or in some cases by

the board of directors itself. For instance, many larger management companies employ accounting staff, file clerks and receptionists, who may purchase supplies, prepare collection letters, assist in budget preparation, or help make arrangements with vendors employed by the association (but not act as liaison to the insurance company).

"While it may be tempting to want to help, if it's a topic that is inappropriate to answer, the unlicensed person may need to say, 'Hold on, let me connect you to the community manager.' If the manager is not available or if the issue complex or detail-specific, it may be advisable to ask the caller to inquire in writing and respond in the same fashion."

Even when the manager is available, requesting a written inquiry has other advantages for the manager, such as avoiding any misunderstanding between question and answer.

"At the end of the day, the community manager is responsible for ensuring that the HOA is served properly," Meriweather said. "They are the ones that are held accountable under the law."

Happy trails, Steve

Retiring staffer recounts career through changes to the Division's role

Nevada's population boom over the past 15 years transformed many institutions of the state, including the Real Estate Division. Steve Urbanetti recalled the day he started with the Division in October 1994, it was a just a few rooms in the Bradley Building and included just 15 people.

"I thought this place was the best. I had just come from working at the Jean prison and had a lot of opportunities to create programs from the ground up," he said.

Urbanetti, a compliance audit investigator, retired in January. His career with the Division, as he described, followed the course of the agency itself.

He started as the assistant to the administrator, but was soon tapped for the first of several new services. In 1995, he was tasked with creating the Alternative Dispute Resolution process, which helps aggrieved parties within HOAs properly notice the parties with whom they have disputes, then get in contact with arbitrators who can render legal decisions on the matter.



Steve Urbanetti said farewell to the Real Estate Division Jan. 8.

"I built that system and ran it for the first 10 years," Urbanetti said.

The program, which is still in place, helps HOA residents who wish to use ADR to resolve governing documents-related disputes.

A program to assist with foreclosures was later added.

One of the greatest changes to the Division came when the Legislature created the Office of the Ombudsman to serve the state's rapidly growing number of HOAs. Urbanetti fielded many of the first calls the office received, and later became one the first investigators assigned to NRS 116 complaints. Over the years, he spoke with thousands of HOA residents, helping them understand their rights and responsibilities under NRS 116.

Before the boom cycle ended, HOAs numbered almost 3,000, containing almost half a million units. Demands for services have kept pace.

Nevada grows at a far more leisurely pace today. Urbanetti plans to enjoy it at a more leisurely pace.

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Real Estate Division
2501 E. Sahara Avenue, Suite 202
Las Vegas, NV 89104-4137