

COMMUNITY INSIGHTS

VOLUME II, ISSUE II

Department of Business and Industry, Real Estate Division

Spring 2006

Nevada Real Estate Division

OUR MISSION

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

Office of the Ombudsman

OUR MISSION

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

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Alternative Dispute Resolution (ADR) Subsidy Program to begin in July 2006

In 1995 the Legislature enacted Assembly Bill (AB) 152, requiring associations and homeowners to utilize the Alternative Dispute Resolution (ADR) process regarding the interpretation, application and enforcement of the Covenants, Conditions and Restrictions (CC&Rs) or any bylaws, rules or regulations adopted by the association (better known as the governing documents) before any civil court action can commence. ***(This requirement does not pertain to the association's right to foreclose for non-payment of assessments or to foreclose for health and safety violations.)***

This process was created to reduce the backlog of cases that would need to be heard in the court system and also to reduce the amount of time and cost associated with filing a civil case.

The Commission for Common-Interest Communities adopted regulations R129-04, Section 48, effective April 14, 2005, offering subsidization for parties that agree to participate in binding arbitration in the ADR process to resolve their dispute.

What is binding arbitration? In binding arbitration, the parties must agree to present their respective cases to a trained arbitrator, who renders a decision and sometimes an award if appropriate.

The difference between binding arbitration versus non-binding arbitration is that an award resulting from binding arbitration is final and enforceable in the same manner as a civil judgment. The decision is not subject to a

demand for trial de novo (heard again by a judge) in civil court. It can only be vacated as provided by statute in NRS 38.241 upon grounds including, but not limited to, corruption, fraud, and the arbitrator's partiality and misconduct.

1. The regulations adopted by the Commission allow the Division to subsidize a portion of the fees owed to the arbitrator, the lesser of 50% or \$500, for binding arbitration:

- For the parties that agree to binding arbitration; and
- To the extent that funds are available in the Account for Common-Interest Communities in the State General Fund for that purpose.

This means that if one of the two parties do not agree to binding arbitration, the party that agrees to binding arbitration will receive subsidy, provided they meet all the required criteria, and the claim will then default to non-binding arbitration. The party that did not agree to binding arbitration will not be eligible for subsidy.

2. A party who wishes to have a proceeding for arbitration subsidized must:

- Submit an application to the Division on a form prescribed by the Division;
- File a claim for binding arbitration within 1 year after the date of discovery of the alleged violation; and
- If the applicant is an association, be registered and in good standing with the Office of the Ombudsman.

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Certified Public Accountant

Shari O'Donnell, Commissioner
Developer Representative

Good standing—currently registered with the Office of the Ombudsman, board of director declaration of certifications submitted, and without any outstanding unit fees owed to the office.

3. A unit's owner is eligible to have one proceeding for arbitration subsidized per fiscal year for each unit that he owns.

4. An association is eligible to have one proceeding for arbitration subsidized per fiscal year against the same unit's owner for each unit that he owns.

5. The funds used to subsidize a proceeding for arbitration:

- Must not be applied to the fee required when filing a written claim pursuant to NRS 38.320 or any attorneys' costs of fees associated with the claim; and
- Must be the lesser of 50 percent of the fees owned by a party to the arbitrator or \$500.

6. The Division will provide notice to an arbitrator that a proceeding for arbitration may be subsidized by forwarding to the arbitrator a copy of the application received.

7. If an application for subsidy is approved by the Division, the arbitrator must, within 10 business days after his final decision, submit to the Division:

- On a form prescribed by the Division, a request for payment of the cost of arbitration; and
- A copy of the final decision.

The Division will pay the cost of arbitration (lesser of 50% or \$500) at the time the Division receives a copy of the final decision from the arbitrator and issues a certificate pursuant to NAC 38.350. This means the arbitrator potentially can only be paid a maximum of \$1,000 per claim (Up to \$500.00 each for the two primary claimant and respondent listed on the claim, should more than one person be listed as the claimant or respondent.)

The Division was given the authority to oversee the ADR process. The Division's staff functions in a facilitator role and has no vested interest in the conflict while maintaining neutrality at all times. The staff will assist each party in understanding the procedures and the required forms that must be utilized in the accomplishment of dispute resolution through the ADR subsidy program. However, the Division cannot give either party legal advice and also cannot advise as to whether any provision of an association's governing documents has or has not been violated or whether any provision is enforceable.

To obtain copies of all forms utilized in the ADR process, you can log onto the Division's web site at www.red.state.nv.us, go to Common-Interest Communities, Common-Interest forms, Alternative Dispute Resolution section.

From the Administrator's Desk ...

By Gail J. Anderson, Administrator

What is the function of the Office of the Ombudsman for Owners in Common-Interest Communities?

Common-Interest Communities are established in NRS 116.625.

The Ombudsman exists to give guidance and provide direction to the specific area of Nevada law that addresses a particular question or issue. The Ombudsman may not give legal advice concerning any specific situation or issue a Decision or an Order regarding an alleged violation.

The Office exists to assist owners to understand their rights and responsibilities, which are set forth in Chapter 116 and in the governing documents of associations, and to assist members of executive boards to carry out their duties. The Office offers seminars and other informational publications to provide education concerning Chapter 116 requirements. These seminars have been offered by both the Ombudsman's staff as well as contracted providers. We realize that classes offered at a certain date, time, and place can limit participation. Therefore, the Office is developing educational and informational programs that will be made available by computer-based technology.

Currently, one CD that is in its final stage of completion and which will be made available to associations is the "Common-Interest Community Orientation Training." This CD provides a broad overview of the services offered by the Office. The next presentation in the works is Board Training, which, when completed, will be distributed to each registered homeowner association for use with their current and future board members. The new Education Information Officer staff position will assist the Ombudsman in developing and delivering educational programs and information to homeowner boards and owners.

The Office also exists to facilitate the processing of claims submitted for mediation or arbitration. The Alternative Dispute Resolution (ADR) program has been enhanced with the implementation of the ADR subsidy program. The Commission for Common-Interest Communities adopted regulations that prescribe who may be subsidized, the dollar amounts of subsidy, and the requirement that the subsidy will be paid directly to the arbitrator for binding arbitration. The binding arbitration decision will resolve and conclude the matter.

Certainly the most highly profiled and challenging aspect of the Office's functions is to investigate disputes, when appropriate, and to assist in resolving disputes. The first line of approach is always to determine whether an issue can be resolved. This is done by reviewing the Ombudsman Intervention Affidavit, along with the required certified letter and response, if any, to the letter. If an issue cannot be resolved by direct communication with both parties, an inves-

tigation is undertaken. Opening letters are sent and a response is requested. Often, multiple requests must be made for a response – and sometimes are never received. This increases the amount of time the investigation process takes to conclude, sometimes taking months instead of weeks.

One of the major challenges of the current enforcement program is that the topics of Intervention affidavits filed are often conflicts that do not rise to a level which the State of Nevada should take a position and bring, through the Attorney General's Office, a case before the Commission to render a decision.

To address and remedy these issues, the Commission has proposed regulations to establish a hearing panel of one or more Administrative Law Judges (ALJs) to conduct hearings, determine violations, impose fines and penalties, and take other disciplinary action authorized by Chapter 116. The ALJ program will allow individuals to come before the judge to present their arguments, and the State will not participate as a Plaintiff.

The investigation process will be shortened, and an investigative file will be prepared and forwarded to the ALJ for calendaring a hearing date, at which time both parties will be noticed to appear before the ALJ to tell their side of the story.

Currently, the only option to have governing document disputes addressed is the Alternative Dispute Resolution program. The Commission does not hear governing document disputes, only alleged violations of Chapter 116. Under the new program, the ALJ will consider and rule on governing document disputes.

While all due-process notice requirements will be followed, the ALJ process will mean a more expedited hearing and decision. The ALJ can hear cases daily or weekly, depending upon the need. The ALJ will issue a decision – and will resolve the dispute.

The Commission made clear that they – and not the ALJ – will hear all Complaints concerning alleged violations of law noticed against licensees, including property managers, community managers, and reserve study specialists. The Commission will also hear allegations of unlicensed activity, allegations of financial misconduct, misappropriation of funds, and embezzlement of funds against any entity under the Commission's jurisdiction. The Division will determine other types of cases that are more appropriately handled by the Commission.

As a co-entity of the Commission, the ALJ (or panel of ALJs) will be selected by the Commission. The ALJ will physically be located separately from the Real Estate Division and/or the Office of the Ombudsman.

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A word from Chairman Buckley of the Commission for Common-Interest Communities

Last February, when I reported to the Senate Committee on Commerce and Labor, I felt a bit sheepish that the most significant accomplishment of the first full year of operation for the Common-Interest Communities Commission was the adoption of a systematic set of regulations – which, in fact, were not fully effective until April 2005. Although I felt the Commission, starting from scratch, had accomplished a great deal in its first 20 days of meetings, I was also aware that our 2004 work was not an end in and of itself. Unfortunately, last year was much of the same, with most of our meetings focused on regulations and the 2005 legislative process. The Commission's third full year began quite differently, with three days of hearings involving alleged violations of Nevada Revised Statutes (NRS) Chapter 116 and community manager licensing laws and regulations. Most of the matters were quickly resolved, but the final hearing took place over three days. The Commission's March calendar was not as crowded, but it is clear that the enforcement aspect of the Commission's job is, at long last, up and running.

What I know I have learned in this process is that state agencies, creatures of statutes, governed by formal regulations and bound by constitutional principles of due process, move very slowly – more slowly than I had imagined. The public and the legislators are not alone in their frustration at the snail-like process of the Commission's first two years. Commissioners share that frustration. Unhappily, one of the lessons the January hearings taught is that the Commission enforcement process also works slowly. By now it is apparent that many, myself included, who saw the creation of the Commission in 2003 as *the* solution to common-interest community (CIC) problems in Nevada were somewhat mistaken.

Yet, the mere existence of the Commission is a quantum leap forward for Nevada CICs. Where else can CIC issues be routinely discussed in an open forum which, by law, must take into account different opinions? One can't always see a concrete product emerge from Commission meetings, but the public, agency, professional and commissioner discussions and dialogue that occur in the Commission public forum have brought us all to a better place of understanding CIC issues. Each commissioner comes from a different background – developer, manager, homeowner, accountant and attorney. Yet the Commission must speak with one voice. Different opinions must somehow reach consensus, and, in the process of reaching consensus, we all learn. This was brought home to me in a particular way at the conclusion of a three-day Commission hearing involving whether certain board members of an association had violated their fiduciary duty to their association. As each of the com-

missioners expressed her or his opinion of the case and interacted with the other commissioners in attempting to reach a decision, it became readily apparent that the real value of the Commission's decision was not the punishment of the wrongdoers, but the educational value inherent in reaching that decision.

The January hearings also pointed out, somewhat painfully I think, that the existing intervention process is not well suited for prompt resolutions of violations of Chapter 116. Partly this is due to the due process requirements of Commission hearings, which begin only after the Division has thoroughly investigated a claim and the Attorney General's office has prepared a case, and require a formal proceeding in which witnesses are called and cross examined. Perhaps more significantly, the combined volume of requests for intervention and licensee supervision are more than the Division staff and the part-time commissioners can ever reasonably expect to handle within the existing framework.

As a result, I have discussed with the Administrator, Gail Anderson, and counsel to the Commission and the Division, the need to create a more streamlined process, in which decisions can be reached more quickly. Needless to say, this will involve more regulations and one or more levels of hearing, but the thought is that a process which results in speedier decisions is what our constituency really needs. Look for a concrete proposal on this in the near future.

In the meantime, while the Commission process is slow, we do move forward. I invite those of you who have not attended a Commission meeting to come and see what we're about. In my recent interview with KLAS reporter Colleen McCarty, she asked me how I would respond to the claim that I was beholden to a particular interest group. My response was, "Come to the meeting!" All Commission decisions are made in full view of the public. Moreover, the value of attending and, when appropriate, participating in Commission meetings, cannot be overstated. The best regulations and, as we look forward to the 2007 Legislature, the best proposed legislation, are those that have the most input. The tremendous educational value of the contested hearings was a surprise to me. It is my hope that the Commission decisions will, in turn, result in better overall awareness of what is and what is not acceptable behavior for our CIC constituents.

Thank you for your patience and participation!

<u>Month</u>	<u>Date</u>	<u>Meeting</u>	<u>Location</u>
August	22-24	Commission Hearing	Carson City
October	17-19	Commission Hearing	TBD
November	15	Commission Hearing	TBD

Nevada Administrative Code (NAC) 116.351 Procedure for Filing Complaint Against a Community Manager

As with any process, there are specific steps that a person must complete prior to filing a complaint. Listed below are the steps indicated in NAC 116.351 for filing a complaint against a community manager with the Real Estate Division:

1. If a person who alleges that a community manager is guilty of misconduct sends the allegations of misconduct in writing to the community manager in an attempt to resolve the issue without filing a complaint with the Division, the community manager shall, in good faith, acknowledge and respond in writing to the person making the allegations within 12 working days after he receives the allegations.
2. A complaint about a community manager must:
 - (a) Be submitted to the Division on a form provided by the Division;
 - (b) Be signed by the person submitting the complaint; and
 - (c) Include, without limitation:
 - (1) The identity of the community manager who is alleged to have violated a provision of this chapter or chapter 116 of NRS, and the nature of the alleged violation;
 - (2) All evidence supporting the allegations, including, without limitation, as appropriate, corroborating statements by other persons or specific information as to persons who may be contacted to provide such corroboration;
 - (3) The name, address, and telephone number of the person submitting the complaint;
 - (4) Documents that evidence and attempt by the person submitting the complaint to resolve the issue with the executive board or the community manager, including, without limitation, any written responses of the executive board or the community manager to the allegations of the person submitting the complaint; and
 - (5) If filed by a tenant of a unit's owner, ratification of the complaint by the unit's owner without the use of a power of attorney by the tenant.
3. Upon receipt of a complaint that complies with subsection 2, the Division shall forward the complaint to an investigator. The investigator:
 - (a) Shall send a copy of the complaint to the community manager and the executive board of any association which relates to the subject of the complaint;
 - (b) Within 12 working days after the receipt of the allegations, shall attempt to obtain a response in writing from the person who is the subject of the complaint;
 - (c) May make such inquiries and investigations into matters related to the allegations in the complaint as the investigator deems appropriate; and
 - (d) Shall submit to the Administrator a written report that summarizes the finding and conclusions of the investigator.
4. Upon review of the written report of the investigator, if the Administrator determines that grounds for disciplinary action against the community manager exist, the Administrator may take one or more of the following actions as he deems appropriate:
 - (a) Issue a letter of censure to the community manager who is the subject of the complaint;
 - (b) Levy an administrative fine of :
 - (1) For the first offense, \$500; and
 - (2) For the second offense, \$1,000;
 - (c) Require the community manager to obtain additional education relating to the management of a common-interest community;
 - (d) Refer the matter to the commission;
 - (e) Refer the matter to the Real Estate Commission; or
 - (f) Refer the matter to the Attorney General of this State.
5. The Administrator may initiate an investigation, audit or inspection of the records of any community manager or any person who performs the duties of a community manager in this State.
6. Any action taken by the Administrator pursuant to subsection 4 may be appealed by the community manager upon written request to the Commission within 30 days after the Administrator takes such action.
7. As used in this section, "investigator" means a person whom the Division deems to be impartial and qualified with respect to the matter in a complaint and who is designated by the Division to investigate a complaint pursuant to this section.

Farewell to a Co-Worker and Friend

On May 12, 2006 the Nevada Real Estate Division, Office of the Ombudsman lost a co-worker and good friend. Jerry Thompson, Compliance Investigator for the Ombudsman's office, unexpectedly passed away and left a void in the Division that was felt throughout the industry.



Jerry was the first investigator hired in 2004 by the Division with the passing of Senate Bill (SB) 100. Jerry was instrumental in working with homeowners and associations in assisting in the resolution process.

Jerry was a man of many facets. He served in the army as a Special Agent of US Army Counterintelligence and had years of experience in the hospitality industry, but the accomplishment he was most proud of was his family. Jerry leaves behind a very devoted and loving wife, whom he shared many stories of their dedication to one another. He was also very proud of his children and grandchildren. Jerry always had a story to share, such as taking the grandkids to Disneyworld or on fishing trips. When he spoke, you could tell the deep affection he had for his family and just how proud he was to be a husband, father, grandfather and father-in-law.

Although Jerry worked full time, he also found time to go to school at night to fulfill a lifelong dream to obtain a degree in higher education. Jerry was awarded his Associate of Art degree in Business Administration from Community College of Southern Nevada. When you asked Jerry what he planned to do with the degree, he would respond, "Nothing, I just wanted to say I did it." Jerry also obtained his certification as a provisional Community Association Manager in 2006.

Although he is no longer with us, his laughter and all the things that he touched will remain with us forever.

Administrator...

Continued from page 3

The process for implementing the ALJ program is underway. The first step is publishing the Request for Information, which will describe the scope of work and to request bids for providing the services described. Once the RFI is closed, the Division will prepare a work program to request funding for a contracted ALJ for Fiscal Year 07, which must go to the Legislative Interim Finance Committee for funding authorization.

Concurrently, the Commission will be conducting Public Workshops in order to adopt the regulations for the program. It is anticipated that by fall of 2006, the ALJ program can be implemented.

Disciplinary Action by Commission for Common-Interest Communities

Gwen Pivaroff, Board Member
Case No. S05-10-36-135
January 2006

Amended Finding of Facts: Respondent at the time relevant to the complaint held office as the president. From approximately May 2003 through December 2, 2003, Joanna Castle was employed by the association to provide for or otherwise engage in the management of Regency Towers. Ms. Castle was employed for approximately 6 1/2 months. Ms. Castle did not have a written Management Agreement with the Association. The Association's Employee handbook of Policies and Procedures stated that regular full-time and part-time employees who have completed one year of continuous service are eligible for annual company paid vacation and are also eligible for sick leave. Ms. Castle had not completed one year of continuous service with the Association.

Upon Ms. Castle's resignation, the Respondent and the treasurer, Fred Peters, approved payment for eight days of vacation pay and six days of sick leave pay. Both Respondent and Mr. Peters authorized expenditure of \$3,461.15 to purchase equipment without obtaining prior approval or subsequent consent of the board of directors. Both Respondent and Mr. Peters authorized expenditure of \$2,225.00 for a website for the association and approximately \$56.90 monthly charge to maintain the website with prior approval or subsequent consent of the board of directors. The bylaws of the association indicate in the absence of the president the vice-president shall exercise the powers and perform the duties of the president. On November 7, 2003, both the respondent and Mr. Peters signed and had notarized a document entitled "Acknowledgment of Limited Representative Capacity." Utilizing the document, the Respondent designated the treasurer, Mr. Peters, to act in her stead as the Association's president during the Respondent's absence from November 9 through November 22, 2003.

Respondent violated NRS 116.31031(1) (2001), when she authorized payment of eight days of vacation and six days of sick leave pay to Ms. Castle in contradiction to the Association's "Employee Handbook of Policies and Procedures" and Bylaws regarding compensation of employees.

Decision: Respondent shall reimburse the Division for the costs and fees associated with the proceedings in the amount of two thousand one hundred eighty one dollars and seventy three cents (\$2,181.73) within six (6) months of the effective date of the Decision. Respondent must complete six (6) hours of education in NRS 116 in subject area of Fiduciary Duties and six (6) hours in Finance within twelve months of the effective date of the Decision. If costs and/or fines not paid within time

Disciplinary Action by Commission for Common-Interest Communities — Con't.

allotted, the Division may institute debt collection proceedings.

Donna Barrows
Community Association Manager
Case No. S05-12-14-195
January 2006

Allegations: In May 2004, Toscana HOA was under declarant control. Only one homeowner was elected to the 3-member executive board. Respondent Donna Barrows was a Community Association Manager and worked for RMI Management. On June 18, 2004, via e-mail, the Respondent accepted, on behalf of the HOA, the transfer of certain common elements within the community from the declarant. Respondent asserts she issued the e-mail at the direction of the declarant members of the HOA which represented the majority of the board. Respondent accepted the transfer prior to homeowner control of the executive board. Respondent acted without the knowledge or consent of the elected board member.

By accepting the transition of certain common elements on behalf of the declarant controlled HOA, Respondent violated NAC 116.360(1)(a)(1) and NAC 116.360(2)(a)(3) including the act found at NRS 116.31038. By exceeding the scope of her authority by accepting the transition of certain common elements with the knowledge or consent of the declarant controlled HOA, Respondent violated NAC 116.360(1)(a)(1) and NAC 116.360(2)(a)(3), including the act found at NAC 116.360(2)(i). By failing to notify the declarant-controlled HOA of the transfer of the common elements, Respondent violated NAC 116.360(1)(a)(1) and NAC 116.360(2)(a)(3), including the acts found at NAC 116.360(2)(b) and/or NAC 116.360(3)(b).

Stipulated Settlement: Respondent Barrows to pay to the Division \$500.00 in administrative fines within 90 days after the effective date of the Commission's order.

Thomas Kelly,
Community Association Manager
Case No. S05-03-07-298
January 2006

Allegations: Respondent is the President and Treasurer of First Columbia Community Management, Inc.

(FCCMI). On or about June 24, 2003, Respondent entered into a Management Agreement with the Holiday Townhomes HOA which was effective April 1, 2003, and was in effect for a term of one year. After April 1, 2004, the first Management Agreement was no longer in effect. The Association and Respondent did not sign another Management Agreement until on or about May 12, 2005. From April 1, 2004, when the first Management Agreement expired, and April 1, 2005, when the second Management Agreement went into effect, Respondent continued to provide property management services to the Association.

By continuing to provide management services without a written contract, Respondent violated NAC 116.360(1)(a)(1), including the acts found at NAC 116.360(2)(a)(3) and NAC 116.305(1)(a).

Findings of Fact: Respondent is required to complete three (3) hours of continuing education reviewing Nevada Administrative Code Chapter 116. The three hours will count towards the Respondent's annual or renewal requirements.

Gerald L. McDonald, Jr.
Case No. S06-07-32-032
January 2006

***Stipulations occur** when both the Respondent and Division have agreed to conditions reviewed and accepted by both sides. A stipulation may or may not be an admission of guilt. Stipulations are presented to the Commission for Common-Interest Communities for review and acceptance.*

Conclusion of Law: Respondent violated NRS 116.700(1) (2003) by providing for or otherwise engaging in the management of a common-interest community while not holding a permit or certificate.

Order: Respondent shall pay a fine in the amount of one thousand dollars (\$1,000.00) within six (6) months of the effective date of the decision. If not paid within the allotted time, Division may institute debt collection proceedings for failure to pay the fine.

Diane Wild
Community Association Manger
Case No. S05-05-15-380
January 2006

Finding of Facts: Respondent is the Owner/President of Castle Management. Beverly Keane, President of Belle Crest II, had some questions regarding the budget of Shadow Hill Master Association, of which Belle Crest II is a sub-association. Ms. Keane e-mailed her questions to the president of Shadow Hills, Donna Russo, who forwarded the e-mail to the Respondent. The Respondent

Disciplinary Actions –cont.

did not respond to the request for information. On May 11, 2005, the Division notified the Respondent of the complaint filed and gave Respondent until May 27, 2005 to respond. The Respondent did not respond. On May 31, 2005, the Division sent another letter to the Respondent and gave her an additional ten (10) days to respond. The Respondent did not respond. On or about June 10, 2005, the Division contacted the Respondent, who stated her father was ill and she was unable to respond. She stated that she would respond by June 14, 2005. The Respondent did not respond by June 14, 2005.

The Respondent violated NAC 116.360(1)(A)(3) (2003), as defined in NAC 116.300 (9) (2003), by failing to cooperate with the Division when the Respondent did not respond to the Division's request for a response to the Claimant. Respondent violated NAC 116.360(1)(a)(1) (2003), as defined in NAC 116.360(2)(f) (2003) by failing to produce an affidavit and/or other documents in response to the Complaint.

Decision: Respondent shall pay a fine of five hundred dollars (\$500.000) within six (6) months of the effective date of this order. If the fine is not paid within the time allowed, Respondent's permit will be automatically suspended until such time as the fine is paid. The Division may institute debt collection proceedings for failure to pay the fine.

Fred Peters, Board Member
Case No. S05-10-37-136
March 2006

Amended Finding of Facts: Respondent at the time relevant to the complaint held office as the treasurer. From approximately May 2003 through December 2, 2003, Joanna Castle was employed by the association to provide for or otherwise engage in the management of Regency Towers. Ms. Castle was employed for approximately 6 1/2 months. Ms. Castle did not have a written Management Agreement with the Association. The Association's Employee handbook of Policies and Procedures stated that regular full-time and part-time employees who have completed one year of

continuous service are eligible for annual company paid vacation and are also eligible for sick leave. Ms. Castle had not completed one year of continuous service with the Association.

Upon Ms. Castle's resignation, the Respondent and the president, Gwen Pivaroff, approved payment for eight days of vacation pay and six days of sick leave pay. Both Respondent and Ms Pivaroff authorized expenditure of \$3,461.15 to purchase equipment without obtaining prior approval or subsequent consent of the board of directors. Both Respondent and Ms. Pivaroff authorized expenditure of \$2,225.00 for a website for the association and approximately \$56.90 monthly charge to maintain the website with prior approval or subsequent consent of the board of directors. The bylaws of the association indicate in the absence of the president the vice-president shall exercise the powers and perform the duties of the president. On November 7, 2003, both the respondent and Mrs. Pivaroff signed and had notarized a document entitled "Acknowledgment of Limited Representative Capacity." Utilizing the document, the Respondent was designated by Mrs. Pivaroff to act in her stead as the Association's president during Ms. Pivaroff's absence from November 9 through November 22, 2003.

Respondent violated NRS 116.31031(1) (2001) when he authorized payment of eight days of vacation and six days of sick leave pay to Ms. Castle in contradiction to the Association's "Employee Handbook of Policies and Procedures" and Bylaws regarding compensation of employees.

Decision: Respondent shall reimburse the Division for the costs and fees associated with the proceedings in the amount of two thousand one hundred eighty one dollars and seventy three cents (\$2,181.73) within six (6) months of the effective date of the Decision. Respondent must complete six (6) hours of education in NRS 116 in subject area of Fiduciary Duties and six (6) hours in Finance within twelve months of the effective date of the Decision. If costs and/or fines not paid within time allotted, the Division may institute debt collection proceedings.

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