THE OFFICIAL PUBLICATION OF THE NEVADA CHAPTER
OF COMMUNITY ASSOCIATIONS INSTITUTE

THE MAGAZINE FOR COMMON INTEREST COMMUNITIES

community interests

SEPTEMBER 2018

TODAY • TOMORROW • BEYOND

IT'S ALL ABOUT THE LAW

GOOD, BAD, AND ALMOST UGLY

NEVADA CHAPTER community ASSOCIATIONS INSTITUTE

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Education Calendar

DCAL MANAGER Adv DCAL

Preregistration for all dates is required. Visit CAI-Nevada.org

Northern Nevada

October

CAI Nevada Reno Member Seminar
"Appearing Before the Commission"
October 17, 2018 at 7:30 a.m. – 9:00 a.m.
Peppermill Resort
1 hour C.E. Credit

CAI Nevada Reno Homeowners Class, DCAL
"Meetings and Elections"
October 18, 2018 at 6:00 p.m. – 9:00 p.m.
Peppermill Resort

CAI Nevada Reno Managers Class
Playground, Speaker Sara Barry, PCAM, NVEBP
October 18, 2018 at 9:00 a.m.– 12:00 p.m.
Peppermill Resort

Southern Nevada

September

CAI Nevada Las Vegas Luncheon
Brand New 1 Hour CE Credit Violation Enforcement, Speaker John Leach, Esq.
September 11, 2018 at 11:25 a.m. – 1:00 p.m.
Gold Coast Hotel & Casino

CAI Nevada Las Vegas Homeowner Class, DCAL
"Meetings and Elections"
September 22, 2018 at 9:00 a.m. – 12:00 p.m.
Providence Master Association

CAI Nevada Las Vegas Manager Class
"Litigation: Working Effectively with the Attorney when the HOA is Named in a Lawsuit"
September 25, 2018 at 9:00 a.m. – 11:00 a.m.
Providence Master Association

CAI-Nevada sends monthly email blast of scheduled events to its' members.
If you are not receiving the monthly blast, contact Chris at info@cai-nevada.org

TODAY • TOMORROW • BEYOND

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WHAT OUR INDUSTRY IS TALKING ABOUT

WHAT HOMEOWNERS NEED TO KNOW

SEPTEMBER 2018

in this issue:

Columns

On Topic

Of Interest

The Marketplace

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CAI Nevada Contact Information
Christina Snow, *Executive Director*
Gaby Albertson, *Administrative Manager*

3230 S. Buffalo Drive, Suite 105, Unit 6, Las Vegas, Nevada 89117
Phone: 702-648-8408 | Fax: 702-240-9690 | info@cai-nevada.org | www.cai-nevada.org

President's Message

FACING THE FUTURE

It's All About the Law!

Adam H. Clarkson, Esq., NVEBP, President, 2018 CAI Board of Directors

In 1991, Nevada adopted the Uniform Common Interest Ownership Act (UCIOA) originally drafted by the National Conference of Commissioners on Uniform State Laws, which you know as NRS 116, the shorthand version of Chapter One Hundred Sixteen of Nevada Revised Statutes. Since adopting UCIOA in 1991, Nevada has amended NRS 116 during every legislative session thereafter, which means our version is no longer what its original title indicated ... it is no longer uniform.

We are approaching another legislative year, which means we are likely to face even more modifications to our formerly "uniform" act. Over the years we have seen a lot of changes. Some changes have been good, such as requiring board members to be unit owners, clarifying the super-priority lien, and prohibiting directors from profiting from their associations. Some changes have been biased, such as protecting owners from director retaliation, but not protecting directors from owner retaliation. Some proposed changes have been ridiculous, like eliminating NRS 116 in its entirety without a replacement. Regardless of your opinion on the changes that have occurred, you can be guaranteed that proposed legislation will arise that will affect your rights within your association. What are you doing to protect those rights?

Through the Legislative Action Committee (LAC) and its media-arm Grassroots, the Political Action Committee (PAC), and the support of other organizations, many CAI volunteers are already taking steps to protect your legal interests in your community and possibly your career. Proposed legislation is already being developed by LAC in preparation for upcoming challenges. Our lobbyist is developing relationships and getting ahead of potential bill proposals that may affect our industry next year. What are you doing to protect your home, your association, and your career? If you are not already a member, please join Grassroots and take part in the calls to action that arise next session. Further, please donate to LAC and PAC to ensure CAI can put its best foot forward for your interests in the next legislative session.

The Northern Nevada Committee is taking us to a new golf course this year! This year's Northern Nevada Golf Tournament will be held at the Lakeridge Golf Course on September 14, 2018, so buy your teams early! I hope you will be joining us!

Please make donations to LAC and PAC. Our Legislative Action and Political Action Committees are hard at work to protect all of our interests at the legislature. Funds donated to LAC support payment to our lobbyist and related legislative efforts. Funds donated to PAC directly support the legislators that support our communities. Every little bit helps, whether your donation is $5, $50, $500, or $5,000. Pooling our resources together is how we are able to succeed.

Thank you for being a member of CAI!

Adam H. Clarkson, Esq., NVEBP

Editorial Exclamations

Our Laws – Good, Bad, or Almost Ugly

Rich Salvatore, AdvDCAL, *Community Interests* Magazine Committee Co-Chair

Laws are good, otherwise anarchy would reign in our country. Laws can also be strange, weird, and even absurd, like these crazy laws still on the books in Nevada.

- It's illegal to drive a camel on the highway.
- In Reno, it's illegal to hide a spray-painted shopping cart in your basement.
- In Reno, benches are not allowed to be placed in the middle of any street.
- In Las Vegas, it's illegal to pawn your dentures.

It's a fact of life that we must obey our laws regardless of whether we personally feel they are good, bad, or ridiculous.

Here in Nevada, we have laws that are in place to help managers and board members operate their respective associations. Whether we agree with all of them or not, "it's the law." Thus, this month's theme, "Our Laws – The Good, Bad, and Almost Ugly."

In this issue you will see some of the ways the laws have changed in the CIC over the years. The Nevada legislative session convenes every two years, during which the special interests groups will be trying to change legislation for their benefit and not the associations'. In **"It's All About The Law,"** Matt Grode, Esq. and Victor Luke, Esq. touch on a few examples of this month's theme. **"The Letter of The Law vs The Spirit"** shows how some laws can be interpreted; Tonya Gale describes how changes affect managers and talked with past and present NRED Administrators in **"Legislative Changes-But Did They Help"**; Adam Clarkson, Esq. reviews the changes required for **"D & O Coverage"**; and Donna Zanetti, Esq. looks at what the 2019 Legislative session could bring in **"Looking Forward – Looking Back"**

In short, this issue brings to light positive and sometimes negative changes to the laws we live by, operate by, and work by.

On a more somber note, this month marks the 17th anniversary of the horrific 9-11 terrorist attack on our nation. In **"9-11 Then and Now,"** Dr. Robert Rothwell recalls his first-hand account of the attack on the U.S. Pentagon. **SEPTEMBER 11 – NEVER FORGET**

Richard Salvatore, AdvDCAL

IT'S ALL ABOUT THE LAW
The GOOD, The BAD and The Indifference

By Matthew L. Grode, Esq. and Victor Luke, Esq.

Laws are not perfect. They do not always result in fairness or equality, and sometimes, laws are too vague or ineffective to be enforced. This article will provide examples of each of these concerns beginning with the recently enacted federal regulations which may unfairly hold associations liable for harassment by third parties. Next, we will highlight certain Nevada laws which had been adopted to strengthen the ability of the state and common interest communities to address certain criminal and related activities.

HARASSMENT

Discrimination in any form based upon race, color, religion, sex, national origin, familial status, gender preference, or disability is simply wrong. Fortunately, various federal and state fair housing laws have been adopted which provide protection to persons within these protected classes. That's the "Good." The potentially "Bad" relates to the recent adoption of regulations which seemingly hold associations liable for the discriminatory and harassing acts of third parties.

In late 2016, the U.S. Department of Housing and Urban Development (HUD) determined that it would strengthen existing law by adopting rules which relate to harassment

claims and to third-party liability. Title 24 Code of Federal Regulation (CFR), Section 100.600, prohibits "*quid pro quo*" and "*hostile environment*" harassment. Quid pro quo harassment occurs when an unwelcomed request or demand, based upon a protected class, requires victims to submit to the demand or request as a condition to the sale, rental, or availability of housing, terms, conditions, privileges of sale or rental, or the provision of services or facilities. By way of example, if a board member will only provide a parking permit to an owner if such person provides sexual favors, quid pro quo discrimination would exist. Similarly, such harassment would be found where a Muslim resident's use of a community pool is conditioned upon her not wearing religious garb (e.g., burkini). This type of harassment can also exist where the approval of an Architectural Review Committee application to install a jacuzzi is subject to the owner's agreement not to allow homosexuals to use the same.

Hostile environment harassment under 24 CFR §100.600 exists where the unwelcomed conduct is so "severe or pervasive" that it interferes with the sale, rental, or use of a dwelling, the terms, conditions or privileges of a sale or rental, or the provision of services or facilities. Examples of this variety of wrongdoing can be found where a director frequently makes sexually suggestive comments, offensively touches others, or there is repeated use of offensive racial epithets by such persons. In determining whether conduct is sufficiently severe or pervasive under these regulations, HUD and the courts will look to a number of factors including the nature of the conduct, its severity, frequency, duration, location, and the relationship of the persons involved.

Unquestionably, persons who participate in quid pro quo or hostile environment harassment may, and in fact should, be held personally liable. Associations may also be subject to a penalty for the harassing conduct of their employees and agents. A housing provider, such as an association, may be held liable for:

1. Failing to take prompt action to correct and end discriminatory housing practices by its employee or agent, where it knew or should have known of the discriminatory conduct;

2. Failing to take prompt action to correct and end a discriminatory housing practice by a third party where it knew or should have known of the conduct and had the power to correct it; and,

3. Vicarious liability for discriminatory housing practices by its agent or employee, regardless of whether the housing provider knew or should have known of discriminatory housing practice (24 CFR §100.7).

The duty to take prompt action to correct and end discriminatory housing practices mandates that housing providers reasonably exercise the powers which are available to it. Such action may include sending notices of violation, imposition of fines, suspension of membership privileges, and, in some cases, the commencement of formal legal action to obtain injunctive relief from the courts.

What can boards do to minimize the risk of liability for harassment, and potentially for third party liability? We believe the following measures should be an association's starting point:

1. Provide training for directors, officers, and association personnel to ensure that such persons recognize and do not directly participate in harassing conduct;

2. We suggest that community managers receive similar training;

3. Boards should adopt formal harassment reporting policies which would encourage victims and witnesses to report improper conduct;

4. Associations should consult with their legal counsel in order to ascertain what legal authority exists under the governing documents and federal and state laws, to respond to complaints in particular cases;

5. Associations should consistently monitor community themed official and unofficial websites such as Facebook, My Space, and Nextdoor and promptly take action to "correct and end" any prohibited activity upon the discovery of the same; and

6. Associations should establish a mediation protocol to address alleged harassment.

In most cases, governing documents do not provide express authority to take action against third parties. This being said, nearly all recorded CC&Rs include language such as this: "The duties and powers of the Association are set forth in this Declaration, Bylaws and Article, together with its general and implied powers of an "association" and a nonprofit corporation, generally to do any and all things that such a corporation may lawfully do which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members . . ." CC&Rs also frequently include provisions which allow associations to enforce all legal requirements, particularly where the governing documents deem violations of law as nuisances. Arguably, such language would create a duty on the part of the board to prevent discrimination and harassment in third party situations. Certainly, where harassment occurs within the common elements, the association is authorized to act. As stated in Nevada Revised Statute chapter 116.3102(1): ". . . the association: (f) may regulate the use . . . of the common elements."

Under 24 CFR §100.7(iii), an association may become "directly liable" for "failing to take prompt action to correct and end a discriminatory housing practice by a third party, where the person knew or should have known of the discriminatory conduct and had the power to correct it." Based upon this regulation, an association may be liable for harassment by a resident or even a vendor where his/her conduct is: (1) based upon a protected class; (2) the association knew or should have known of the harassment; (3) the association had the power to correct and end the harassment; and (4) the association failed to take prompt corrective action.

NEVADA LAW

Closer to home, the Nevada legislature has been seriously tackling the area of homeowners' associations in a comprehensive way since at least 1991, when it adopted the Common Interest Ownership Uniform Act. Over the past decade, the Nevada legislature has made numerous changes to the Act. Some of these recent changes were undoubtedly efforts to prevent the reoccurrence of a scandalous conspiracy exposed in 2008. In that case, federal law enforcement officers uncovered a plot by a construction defect attorney and a construction defect remediation company to corrupt and take over homeowners' association boards for the purpose of steering lucrative legal cases and repair contracts their way. All the recent changes to the Act, of course, cannot be explained simply as a response to that scandal. Rather it appears that Nevada lawmakers are eager to both learn from past problems and innovate improvements to the quality of life for Nevada residents. The results have thus far have been a mixture of good, bad and indifferent.

To provide a failsafe in the event the other reforms described below do not prevent unit owners' harm, the law has been modified to require associations to carry significant insurance coverage for board members' bad conduct. In 2011, NRS 116.3113 was amended to require at least five million dollars of coverage (or three months of assessments, whichever is less) for criminal wrongdoing by the board. Last year, in 2017, that same law was changed to also require at least one million dollars of coverage for negligent conduct by the board of directors. Reactions to these changes seem to be like insurance in general—nobody likes paying premiums unless and until there is a valid claim, and then that insurance is a savior.

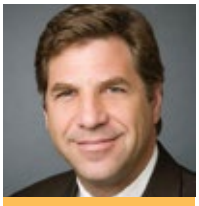
Removing board members from their positions of power has been made easier, at least in theory. In the great construction defect scandal from a decade ago, unit owners often tried to purge their boards of corrupted members but failed. A significant challenge these unit owners faced was intimidation and harassment. So, in 2009, NRS 116.31034 was modified to require that board recall votes must be by secret ballot. Subsequent changes also made recall elections easier to instigate. NRS 116.31036 was amended in 2011 to reduce the total number of unit owners needed to cause a recall election. That change left in place the requirement that at least 35 percent of total owners needed to vote for removal, but reduced to only 10 percent the minimum number of owners whose signatures would be needed to put a recall election on the ballot. That law furthermore began expressly outlawing any interference with such signature collection efforts.

Normal board member elections have also faced efforts to protect the integrity of the franchise. In a direct response to the construction defect conspiracy, interfering with elections and ballot stuffing, though never exactly legal, were finally and expressly made illegal in 2009 by the enactment of NRS 116.31107. Campaigning limitations were also streamlined in 2009 with the amendment of 116.31034, requiring all candidates for board positions to utilize a single page candidate statement.

At the core of the construction defect criminal enterprise from the last decade was the conspirators' success in planting the contractor's employees onto boards in sufficient numbers to constitute a majority, thereby having the power to grant the lucrative contracts back to the conspirators. Laws were put in place, therefore, which expressly prevent such conflicts of interest. In 2011, NRS 116.3103 was amended to hold board members responsible for avoiding conflicts of interest. In 2015, Nevada law on this subject was strengthened further with an amendment to NRS 116.31034, forbidding anybody with a close relationship to another board member from being eligible for the same board. These changes appear to all address the notion that even if corruption might not be eradicated altogether, concrete steps can be made to slow its spread enough to prevent a corrupted majority.

On top of changes designed to impact who sits on the board are statutory amendments focused on improving the quality of the vote itself. Sunlight, as they say, is the best disinfectant, and a corrupt board has greater chances of succeeding where unit owners are kept in the dark. In 2011, 116.31175 was amended to require associations to provide upon request free or nearly-free copies of HOA financial statements, budgets, reserve studies, etc. within twenty-one days of the request. In 2017, NRS 116.31083 was changed so that notice of even purely executive sessions, conducting no public business, must be fully provided to unit owners.

Finally, with an eye toward the future, in 2011 Nevada freed up associations to allow electronic voting except for elections which require secret ballots, with an amendment to NRS 116.311. Similar laws have passed in other states. While in theory this may expand owner participation in the affairs of their HOAs, we have not seen a great wave of interest in electronic voting . . . yet. Perhaps a bit of "indifference" facing the somber work of sorting the good from the bad.



Matthew L. Grode, Esq., Gibbs Giden Locher Turner Senet & Wittbrodt LLP

Victor F. Luke, Esq., Gibbs Giden Locher Turner Senet & Wittbrodt LLP

9/11 Then and Now

By Robert Rothwell, Ph.D., AdvDCAL, Colonel, USMC Retired

The Pentagon is a fortress, composed of impenetrable bunkers, built to house and protect the many leaders of all levels who are responsible for our National Security.

On September 11, 2001, I was inside the Pentagon in a private meeting with the Commandant of the United States Marine Corps, who is also a member of the Joint Chiefs of Staff. We were discussing his attendance at our annual celebration here in Las Vegas of the birthday of The Marine Corps … known as 'The Marine Corps Birthday Ball.'

About five minutes into our meeting, an adjutant burst into the office and informed the Commandant that planes were crashing into the twin towers in New York. Monitors were instantly activated so the Commandant could immediately assess the situation. After watching the monitors a few minutes, I turned to the Commandant and suggested "we need to scramble some of our … ." Before I could get all the words out of my mouth Flight 77 hit us in the "C" ring at over 500 mph.

That wing of the Pentagon shook like it was a bowl of Jell-O. I was thrown into one of the supporting columns. We could feel the heat of the fireball, which reached more than 1,800 degrees. I was scared to death! My first instinct was to protect the Commandant, but he directed me to help the others who were trapped inside the building. My body automatically shifted gears, not because I was brave, but because I knew people needed help.

After escorting the Commandant to a 'secure' bunker and helping others who were affected by the blast, I was directed to an area that was 'safer' than where I was.

Throughout all this, I saw, in the Pentagon, people helping others who were of different religions and different backgrounds. It was not people of different ranks or different stations of life … it was simply one human being reaching out to help others … and that is what America is all about!

Although 17 years have passed, the wounds are still present … the emotions are still strong … the memories of that day still linger. But, through it all, the strength and courage shown that day embody the character of America.

Our strength as a nation gives hope to thousands. When anyone looks at America and remembers the tragedy of 9/11, they remember that our strength is based on the "huddled masses, yearning to breathe free."

May we never forget that day … and never forget that we, as Americans, have a heritage of helping others.

Robert Rothwell, Ph.D., AdvDCAL, CAI National Board of Trustees Nominating Committee; National Chapter Liaison Committee; President, The Village Green HOA

Legislative Changes, But Did They Help?

By Tonya Gale, DCAL, CMCA, AMS, PCAM

When I started as a homeowner association manager a decade ago, there were issues with industry professionals finding loopholes in the system and exploiting those loopholes to benefit themselves. It was a chaotic and scary situation for a new manager. Many changes occurred in the state legislature and within the Real Estate Division that were caused by the selfishness of those people. It took time to see the changes evolve, how they impacted our industry; but looking back, were those changes helpful to those still in the industry?

Changes in 2009

Although there have always been changes that come through the legislature every two years, 2009 is when we started to see more laws that arose due to theft of funds. The requirement of two signatures for operating accounts was a big one. This meant a single board member couldn't simply sign off on operating expenses as they could in the past.

A collection policy was required to be drafted and distributed annually to ensure owners were aware of the fees that could be placed on their account for non-payment.

One of the biggest changes to NRS116 in 2009 was the fact that prosecution of category D Felonies were now allowed for fixing an HOA election and for being the recipient of a "kickback." The loopholes were beginning to slowly be closed off; however, the Real Estate Division was facing their own issues from the complaints and allegations they were dealing with because of these changes.

Changes in 2014

For several years, the office of the Ombudsman for Common Interest Communities was struggling to determine how to handle the influx of cases being submitted with regards to the laws noted above and many others. It wasn't until 2014 when Sharon Jackson (former Ombudsman) and JD Decker (former Administrator for the NRED) stepped in that we started to see real results in the Real Estate Division. I recently sat down with JD Decker to discuss his years as the NRED Administrator and what changed within the Division during his two-year tenure. This is what he had to say.

Q: *In the time frame you were the Administrator for the NRED, what significant changes did you help implement?*

JD Decker: The Division was completely restructured, from personnel to the organizational aspects of every department. With the outside perspective we had on the Division, we found that NRS116 had a different structure in mind than what was currently in place and we took the steps to implement what we felt would improve the flow and the overall processing of alleged claims. There was at least a four-year backlog of claims that had been filed that had not yet been responded to because there was not a clear determination of what could be done to prosecute or if mediation was the better alternative. We substantially beefed up the mediation side of the Division as well, in order to attempt to get claims worked through peacefully and in a timelier manner instead of allowing them to sit in limbo for years.

Q: *What change do you* feel was the most significant to the industry as a whole?

JD Decker: There was always this stigma of the NRED being more of a hindrance, so I feel that the Division being a helpful impact within the HOA community was huge for us within the Division. The overall direction we were able to take the NRED made it more useful to as many people as possible. We were maintaining the integrity of NRS116 and all of its counterparts, which was needed more than anything in order to bring purposeful structure to NRED and help get resolution for those in need.

Q: *What change do you feel was the most significant for homeowners and managers?*

JD Decker: Once adjustments and changes were made, NRED was now the deciding factor on who could be prosecuted and who would move forward with attempting to resolve issues. As it was being run previously, it was almost as if homeowners and managers would make that decision. Taking on the burden of making these types of decisions was positive on both ends because managers were no longer afraid of frivolous prosecution and homeowners did not have to worry about counteractive vengeance which ultimately resolved more issues.

Changes in 2017

After it seemed the NRED was headed in a positive direction with the various changes made in a three-year period, both Sharon and JD moved on to other roles within the state and the reins were passed on to Charvez Foger and Sharath Chandra. They too are continuing the changes within the NRED to better assist the industry. In a recent email interview, this is what Charvez had to say about what they are doing now and for the future:

Q: *How is the current staff in charge of the NRED working to make the system better overall?*

Charvez Foger: "The current staff has implemented new innovative programs to allow the Division to run more efficiently. Here are a few examples. We removed the forms 514A and replaced with just the 514 which is more user-friendly and easier to fill out. We have promoted our former Training Officer to our new Education Officer and now she will be in charge of teaching classes for CE credits. We have revamped our whole ADR process and it's now running more efficiently. The Training Officer classes have increased from 15 people to an average of about 50 people each class."

Q: *What are the overall plans for the future of the NRED with you at the reigns?*

Charvez Foger: "Currently there are 3228 associations registered with NRED consisting of 540,165 units. We are averaging about six new associations per month and we are looking for this number to rise in 2019. This fiscal year we had a total of 167 Intervention Affidavits received in our office. With the classes NRED is providing and the information we are disseminating, we are projecting this number to drop in 2018. In an effort to potentially reduce the number of complaints and assist in the education of our constituents, the Division has increased training throughout the state. The trainings are provided to board of directors, unit owners and CMs. The trainings have been well received and are available on the Division's website, resulting in 191 video views. My plans are to continue to streamline the processes and make myself and NRED more accessible to the public in hopes they will better understand exactly what services our office provides."

So did the change help? I believe it has. I too echo the thoughts of JD Decker as everything in this world, especially this industry, is a work in progress. As long as we continue to change as the industry evolves we should be able to stay ahead of the game. Here's to the future!

Tonya Gale, DCAL, CMCA, AMS, PCAM, Treasurer of the Nevada Chapter BOD, is the owner of EPIC Association Management.

Spotlight on the 2018 Gala Awards!

By The Gala Committee

On March 29, 2019, the annual Gala will be shining a light on the accomplishments of active CAI members. But before that happens, the Gala Committee needs YOU to NOMINATE those individuals you consider worthy. Below are the requirements and instructions for the nominating process. Please keep in mind:

- **All nominees must be CAI members in good standing.**
- **All names are redacted from the nomination forms when being considered.**

SPOTLIGHT ON MANAGER OF THE YEAR

It's easy to nominate your favorite manager of the year. The process begins with email blasts from CAI for the gala awards. There are seven categories to choose from this year: Northern Nevada Portfolio Manager of the Year, Southern Nevada Portfolio Manager of the Year, Northern Nevada On-Site Manger and Southern Nevada On-Site Manager, along with AMS Manager, CMCA, and PCAM Manager of the Year.

Select your nominee, write a short essay on why you are nominating this individual, select submit, and you are done. Remember that the nominee you select for AMS, CMCA, and PCAM should be for their highest achievement level, and nothing below; if they are a CMCA you don't select them for an AMS award, etc. Everything else is up to the nominee to complete, the CAI staff to verify their attendance at events throughout the year, and the committee to judge the essay. Remember, as you are making your nomination, think about the manager's involvement with CAI during the course of 2018. Did they do anything with a committee? Were they involved in outreach projects? Did they contribute to the educational programs of CAI? They need to be involved; points are awarded for their contributions along with their individual essay which indicates to the committee how well they enhanced the HOA lifestyle of the association they managed. Points are also given for awards they have achieved during the course of the year.

SPOTLIGHT ON ASSOCIATION OF THE YEAR

Do you know an outstanding association of the year that should be nominated? If you answered yes, then respond to the CAI email blasts to review the categories, and nominate. There is a total of six categories to choose from, which includes: Northern Nevada Outstanding Small Association of the Year, Southern Nevada Outstanding Small Association of the Year, Northern Nevada Large Association of the Year, Southern Nevada Large Association of the Year, High-Rise Association of the Year (Revived for 2018), Outstanding Master Association of the Year (with at least one sub-association) (new for 2018).

Criteria is the same no matter where you live in Nevada. The Board of Directors and the members for these associations should embody the best community aspects of an association. Nominees will be judged on how well their association has enhanced the lifestyle of their residents and homeowners, overcame issues and problems, created a sense of community, and/or engaged in a project that had a large impact on the overall operation of their association in 2018.

The nominee will have some very specific criteria to follow, but this is not your concern. Your concern is to select your honoree, write a short essay on why you are nominating this association, select submit, and you are done. Everything else is up to the nominee to complete, the CAI staff to verify their attendance at events throughout the year, and the committee to judge the essay

In the case of nominating a high-rise association, the criteria for this award is basically the same as that described above, with the exception that to qualify for this award, the high-rise association must be at least four stories or more. The nominee has some very specific criteria that must answered. But your job is simple; refer to the CAI email blast, then enter the association, write your essay, and you are finished.

As for the Outstanding Master Association of the Year, it is presented to a master association with at least one sub-association that, again, through its Board of Directors and members, best exemplifies the community aspect of an association. So, what are you waiting for? If you know of such an association, refer to the CAI email blast and select Outstanding Master Association of the Year, complete the essay, and you are done and ready for nominating someone else in another category.

SPOTLIGHT ON OUTSTANDING BOARD MEMBER OF THE YEAR

For this category, we have two awards, one for the north and one for the south. The nominee must be someone who has made a difference in the community which they serve, whether it is a small association, a high-rise, a master-planned community, a large association, or a self-managed association. The nominee will be judged on how well they have enhanced the lifestyle of the residents of their community, overcame issues and problems, created a sense of community and/or a project that had a large impact on the overall operations of their association during 2018. In addition, the nominee must have made a difference within CAI: serving on committees, writing articles for the *Community Interests* magazine, shown ethical standards and professionalism with outreach in the local community, awards, and any future goals they may have.

Name your nominee, write a short essay about the nominee for which they will be judged. The criteria for the essay includes such things as: how he or she has enhanced the lifestyle of their residents, or a project that had a large impact on the overall operations of the association, or how they overcame issues and/or problems which created a sense of community. The rest is up to the nominee, management to verify, and the committee to judge the nominee's final essay.

SPOTLIGHT ON MANAGEMENT COMPANIES OF THE YEAR

Outstanding Small Management Company of the Year, Outstanding Large Management Company of the Year. Small encompasses less than 10,000 doors they service in Nevada, while large encompasses 10,000 doors or more. Your task is simple, nominate your management company and they do the rest. All nominees will be judged on a selection of things: quarterly or monthly breakfast and/or luncheon attendance, professionalism, educational opportunities, professional designations of their managers, contribution to the CAI NV Chapter magazine, along with outreach in the local community and local or national CAI awards. Future professional goals related to CAI will also be considered in the process of awarding points.

SPECIALTY AWARDS

Spotlight on Magazine Article of the Year

Nominees for this award are chosen by the *Community Interests* committee with the winner selected by CAI National. The committee, when selecting their award nominees, reviews all magazine articles written during 2018 by a CAI member. A criteria of seven points must be followed during the review process. Committee members send the articles, up to eight, (without copying other committee members) to Gaby Albertson for tallying the articles that have been nominated. The top four articles go to National for the award selection.

Spotlight on Ambassador of the Year

This award, originally called 'Recruiter of the Year,' is presented to an outstanding member who has been not only instrumental in others joining CAI, but is actively encouraging current members to continue to be involved in the CAI activities, such as: classes, member breakfasts, luncheons, social events such as golf tournaments, trade shows, outreach programs or any other activities that encourage membership involvement.

This award is presented to a member of CAI who has contributed to members joining and being involved in activities of CAI such as classes, member breakfasts and/or luncheons, and special events such as golf tournaments, trade shows, and outreach. Nominees will also be judged on any activities in which they have promoted involvement in CAI.

Spotlight on Rising Star

The Rising Star is a one-time only award in recognition of members who are new to the organization, or someone who has been inactive and has returned, but has demonstrated a high level of commitment to CAI in a short period of time. *To qualify, nominees must have been a CAI member for two years or less.*

This category **is one of three that are not self-nominating**. The person making the nomination will not write an essay, but instead will list and describe in detail accomplishments achieved by the CAI member nominated for the 2018 year. To be eligible for this award, the nominee must have made a significant impact either by creating new programs and/or solved a problem in the industry. The rising star also has to complete an essay and answer questions concerning their involvement in 2018 within CAI.

Spotlight on Golden Star

Individuals who have been members of CAI for 10 years or more are eligible to be nominated in this brand-new category, the Golden Star Award. This is a one-time only award and self-nominations are not allowed. Members who have made a significant impact, created new programs, and/or solved a problem in the community association environment during 2018 should be considered for nomination. The requirements for this award are the same as those for Rising Star, with the exception of the length of membership.

BOARD APPOINTED AWARDS

In addition to the above awards there are also a series of awards that the board selects. They include Business Partner of the Year, DCAL, and Committee Member. These awards now have new titles: Award of Excellence Business Partner, Award of Excellence DCAL, Distinguished Chapter Service Award.

WORKSHOP

At the September luncheon, a workshop will be provided to help you understand the nominating process through Cvent. This is a great time to learn more from your Gala Committee and to make sure that we get an abundance of nominees for all categories this year. Remember, if we do not receive a minimum of two nominations per category, no award will be given.

It's time to Nominate!

Nominate Your Favorite Board Member/Homeowner, Manager, or Business Partner for the 2018 Gala Awards

By The Gala Committee

Do you know a manager who has made an impact on the management of their associations or in the communities they serve, a business partner who has made an impact on the industry as a whole, or a homeowner/board member who has gone above their role as a community volunteer willing to serve? Then, what are you waiting for? It's time you joined the bandwagon and nominated someone, or even several someones. The nominating process is simple.

1. When the CAI email blast arrives, go to the Gala Awards tab;
2. Select your category that you are nominating for;
3. Name your nominee;
4. Write a short essay on why this person or this community is worthy of such an award;
5. Hit submit, and you are done.

I ask you, was that so painful? Did that take too much time out of your busy schedule? If you answered no to both of these questions, then congratulations, you too are a winner in our eyes, the eyes of the Gala Committee.

Remember there are a total of 25 award categories, plus four additional that the Board of Directors select. Four of these categories apply specifically to northern Nevada, manager, association, business partner and board member; four specifically to the south using the same categories; and 18 which cover the entire state.

Within this issue of *Community Interests* magazine, you will see an article called Spotlight providing the categories and requirements for nominations. Once the nominee is contacted the remainder of the process is their responsibility.

If you are still confused, come to the September luncheon where we will have a hands-on introduction on the process. If you are still confused, see a committee member who can help. May the best person within each category be recognized.

Nominations open October 1 and close October 31

Essay submissions begin November 1 and close November 30

HARRY THE HAPPY HOMEOWNER

Disclaimer: Answers provided to questions about governing documents, NRS statutes, or any other legal matter are not in any way represented as legal advice.

Have questions? Need answers? Send your questions to me at info@cai-nevada.org.

Q - Hi Harry, We have a few property owners that are renting their homes in our HOA. Are renters permitted to attend our association board meetings or just homeowners? Signed: Curious George

A - Hello Curious: Association board meetings, including the annual members meeting, are for residents of the association, which are typically owners of property or unit. If an owner is renting their property, the tenant does not have the same rights as an owner has.

The question you need to ask yourself is: Why would you restrict renters from attending the meeting? Renters are people too and more importantly, they are neighbors. However, renters do not have certain rights within the association, such as voting, and must abide by the same rules and governing documents of the association. Your HOA meeting should be well structured and should have rules about open forums, agenda items, etc.

So why not allow a renter to come and observe the meeting and maybe even bring up ideas or concerns in the open forum? Too often we look and treat renters as if they are outsiders in our neighborhoods. It might be said that they don't take pride in the community. Sure, there are bad renters... just like there are bad homeowners! But excluding someone from participating in their community is counterproductive.

Q – Hello Harry, As a board member I always hear "NRS says this" and "NRS says that"! I am finding it very hard to keep up. We recently had an issue, so I looked in NRS to make sure it was handled right. When I found what I was looking for, I couldn't understand it. Why do we need all of these regulations? Signed, Confused

A – Hi Confused: Join the club, a lot of board members find it hard to understand NRS 116. I totally agree with you. I would like to see the laws written in layman's terms instead of legalese. HOWEVER, the law must be very specific and codified by the state, which means, "legalese!"

Nevada is one of the most regulated states when it comes to Common Interest Communities. Many of the statutes are in place as a refinement to previous existing laws. Times change and the laws change with it. The statutes are there to provide associations specific guidelines for operating their associations correctly.

The best advice: when in doubt, ask your attorney.

Looking Forward/Looking Back – Legislative Action Committee

By Donna Zanetti, Esq.

Looking forward to 2019, LAC anticipates many changes in state government. Although HOA issues do not usually generate "single issue" voters, if you have an opportunity to talk with the candidates running for election in 2018, please take a minute to ask them where they stand on the Super Priority Lien and the importance of covenants in maintaining property values. Ask them if they live in a community association and, if they do, whether they support and follow the rules.

At the top, we will have a new governor and attorney general. Adam Laxalt and Steve Sisolak are running for governor. Both live in community associations. As chair of the Clark County Commission, Sisolak is familiar with HOAs from the development side. Clark County is currently involved in litigation concerning a development close to Red Rock Canyon. As Attorney General, Laxalt had an opportunity to intervene in the federal litigation challenging the super priority lien and the constitutionality of NRS 116.

All seats in the state assembly are up for election in 2018 and voters will be electing State Senators in 11 districts, a majority of which are in the Las Vegas area. HOAs lost a very able senator this year when Governor Sandoval appointed Becky Harris to chair the Nevada Gaming Board. Senator Harris sponsored two very important bills for HOAs in 2017 including one to clarify that a condominium association may abate a water or sewer leak inside a unit and another to fix a glitch in the "election by acclamation" provisions that made it just as expensive as sending out ballots in an uncontested election. A number of incumbents are running for re-election and three current Assembly members are seeking to "upgrade" to Senate seats. Since votes tend to be unanimous once a bill reaches the floor, reviewing incumbent voting records is not a good way to figure out whether current elected representatives understand and support community associations. If HOA issues matter to you, please ask the candidates where they stand.

Senator Majority leader Aaron Ford is running for Adam Laxalt's seat as Attorney General. Senator Ford was instrumental in crafting the 2015 revisions to NRS 116's non-judicial foreclosure provisions and preserving the super priority lien in the 2017 Legislative Session. If he wins, we will have a person who understands HOAs and the Super Priority Lien in that seat. If he loses, he will likely remain as Senate Majority leader if the Democrats retain control of the State Senate.

As LAC looks toward the next session, it is considering several amendments to NRS 116 and related statutes and regulations. With regard to reserves, LAC would like to tie the start date of the reserve study to the association's fiscal year. This would make it easier for budget purposes and eliminate the relentless "forward creep" of reserve study due dates when the five-year period is pegged to the inspection date. We would also like to require that reserve study specialists disclose areas where they lack the expertise to estimate the useful life and remaining useful life. For example, the reserve study specialist may not have training or experience in evaluating the condition

of asphalt, stormwater management facilities, or private utilities, all components that if not accurately evaluated could result in significant underfunding of reserves. With this disclosure, boards will better understand the service for which they have contracted and may choose to retain an expert to provide an evaluation which can then be incorporated into the reserve study.

NRS 116 contains numerous fixed fees and references to technology whose time has passed. If you purchased a new computer lately, it probably does not have a CD drive. Yet, NRS 116 contains specific references to providing information on CDs. LAC's goal is to peg fixed fees to a standard which adjusts over time to keep pace with inflation (and allow the HOA to cover its costs) and amend technology references to use language which is broad enough to cover ever evolving technology.

Continuing with technology, LAC would like to see changes to NRS 116.31153 to allow associations to better utilize electronic banking services while ensuring adequate safeguards to protect association funds.

LAC will also be looking at some clarifications on multi-family building insurance and the effect of tort liability on individual owners when there is a judgment against an association. You may recall that earlier this year a jury found a Las Vegas homeowners association responsible for head injuries caused when a swing set collapsed and awarded the plaintiff $20 million.

NRS 116 currently provides relief from many of its provisions for homeowners associations which are 12 units or less. However, as written, no similar relief is available for small condominiums or cooperatives. LAC would like to see this exception broadened to include all types of common interest communities.

Finally, LAC would like to see non-binding arbitration restored to a viable option under the Real Estate Division's alternative dispute resolution program. The current default is mediation. Additionally, LAC seeks to strengthen the program so we can again attract good, competent arbitrators. The state lost many good arbitrators due to the fee cap it imposed. The problem is particularly acute in Northern Nevada where there are only two mediators for the entire region.

Donna A. Zanetti, Esq., Leach Johnson Song & Gruchow, Co-Chair, Nevada LAC

HOA Transparency:
As Clear as Beveled Glass

By John E. Leach, Esq. and Cheri Hauer, Esq.

In today's environment, everyone expects or, better said, demands transparency. Public access to information dominates the news and includes satellite transmissions and social media. Owners in associations attempt to impose the same standards on homeowner associations. They seem to get some momentum in this regard from the Nevada law, which provides that an association "shall upon the written request of a unit's owner, make available the books, records and other papers of the association." *See* NRS 116.31175(1). However, this general rule is not absolute and there are many owners that either misunderstand or refuse to accept the fact that there are certain records that owners are not entitled to review or copy. The fact that confidential and privileged records are occasionally produced is further evidence that even community managers and association officers and directors may also misunderstand what records must be produced. Simply stated, association transparency is as clear as beveled glass.

1. An association should not produce the "personnel records of the association, except for those records relating to the number of hours worked and the salaries and benefits of those employees." *See* NRS 116.31175(4)(a)[1]. Keep in mind that if an association enters into a contract with a management company, the management company employees are not the association's employees and no personnel records regarding the management company employees must be produced.

2. An association should not produce "the records of the association relating to another unit's owner." *See* NRS 116.31175(4)(b).[2] This includes any "architectural plan or specification."

3. An association is not required to produce any records, including minutes of the board meetings[3], a reserve study and a budget, if the document "[i]s in the process of being developed for final consideration by the [B]oard; and [h]as not been placed on an agenda for final approval by the [B]oard." *See* NRS 116.31175(4)(c).

4. An association is not required to provide an owner with a copy of executive session meeting minutes. However, an association must "provide a copy of the decision to the person who was the subject to being sanctioned at the hearing or to the person's designated representative." *See* NRS 116.31085(6).

5. An association is not required to produce any attorney-client privilege communications. *See* NRS 49.035 through NRS 49.115. Thus, any correspondence to and from the association's legal counsel "made for the purpose of facilitating . . . professional legal services to the client," and intended to be privileged, does not need to be produced to any owner. In fact, if the association is involved in litigation, a witness is not required to divulge any attorney-client privilege communication unless the client (the "Association") waives the privilege. This begs the question: If attorney-client privilege communications do not need to be produced in court, then why should attorney-client privilege communications be produced to other owners in the community?

6. On April 20, 2009, the Nevada Real Estate Division issued a Letter of Instruction to an association stating that:

   This is the Division and Commission position. Any meeting to discuss association business with a quorum

of the board must be noticed, agenized (sp.), and open to the members.

This Letter of Instruction received much attention as it arguably prohibited workshops in associations, without notice to the members. However, on May 30, 2014, the Division rescinded the Letter of Instruction, thereby removing the cloud over workshops. Thus, associations are permitted to conduct workshops. Notice to the membership is not required. An agenda and minutes are also not required. It should be noted, however, that in order for a workshop to retain workshop status and not morph into a board meeting, the board should not take any action. If during a workshop, the board determines that action on an item is required, then the board must implement one of its several options, including, but not limited to, action without a meeting, an emergency meeting with modified notice requirements, or a special meeting of the board in compliance with NRS 116 and the association's governing documents.

In short, while associations should continually strive for transparency, particularly in financial matters, there are numerous issues that cannot and should not be disclosed to the membership at large. It is not a violation of law or the association's governing documents to preserve the sanctity of confidential or privileged information. To the extent that any community manager or an officer or director of an association is uncertain as to whether a demand for documentation must be produced, the community management company and board ought to immediately contact its legal counsel to confirm that the documents being requested must be produced to comply with Nevada law and its governing documents.

[1] NAC 116.405(4) allows an association to produce the personnel records of employees if the employee consents to the disclosure.

[2] NAC 116.405(4) allows an association to produce the records relating to another unit's owner if the owners consents to the disclosure.

[3] An association must produce a copy of the minutes or a draft of the proposed minutes within 30 days after the meeting. See NRS 116.31083(8).

John Leach, Esq, NVEBP, CCAL, Leach Kern Gruchow Anderson Song

Cheri Hauer, Esq., Leach Kern Gruchow Anderson Song

Has Your Association Notified All Unit Owners That D&O Coverage Is Not Available for Foreclosures as Required by NRS 116.3113(3)?

By Adam Clarkson, Esq., NVEBP

If you have attended one of my legislative updates, then you have heard about the notification discussed within this article. However, many managers and board members still have not heard about this issue, and, given the substantial potential liability, it is something all associations should be aware of and address.

A number of changes were made during the 2017 legislative session, including the addition through Senate Bill 195 of subsection (d) to NRS 116.3113(1). Subsection (d) is the section that now requires Nevada community associations to maintain a minimum of one million dollars in directors and officers insurance. NRS 116.3113(1)(d) provides as follows:

> "1. Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available and subject to reasonable deductibles, all of the following:
>
> . . .
>
> (d) Directors and officers insurance that is a nonprofit organization errors and omissions policy in a minimum aggregate amount of not less than $1,000,000 naming the association as the owner and the named insured. The coverage must extend to the members of the executive board and the officers, employees, agents, directors and volunteers of the association and to the community manager of the association and any employees thereof while acting as agents as insured persons under the policy terms. Coverage must be subject to the terms listed in the declaration."

This provision was adopted quietly and without much discussion. Of course, it would be difficult to argue that requiring associations to maintain such coverage minimums would be a bad idea given the proliferation of lawsuits against Nevada associations. Moreover, most associations' governing documents already required such coverage and prudent associations were already obtaining such coverage regardless of whether their governing documents required it. However, there is a subtle new requirement flowing from this legislative change that does not appear in the language itself, but is a result of the change.

Over the last few years, most Nevada associations have faced wrongful foreclosure suits, with or without merit, for many of their associations' foreclosures. In response, many director and officer insurance coverage providers have withdrawn from the Nevada market and most that have stayed have broad foreclosure exclusions in their director and officer insurance policies, which means most Nevada associations are no longer able to obtain director and officer insurance policies that include foreclosure coverage. This is where the subtle change caused by the addition of subsection (d) to NRS 116.3113(1) becomes an issue because NRS 116.3113(3) provides as follows:

> "**If the insurance described in subsections 1 and 2 is not reasonably available, the association promptly shall cause notice of that fact to be given to all units' owners.** The declaration may require the association to

carry any other insurance, and the association may carry any other insurance it considers appropriate to protect the association or the units' owners."
NRS 116.3113(3) (emphasis added).

Naturally, if your association has not provided notice to all unit owners that D&O coverage is not available for foreclosures, then you are currently thinking of arguing that the mere exclusion of foreclosures does not mean that D&O coverage is not available and therefore this section does not apply. However, is the questionable success of such an argument really something you would like to be arguing in court in defense of failure to send such a notice in lieu of merely including the notice within an upcoming association-wide mailing?

Sure, it is a decent argument, but there are also strong arguments to the contrary. There is the argument that the notice is intended to allow owners to take appropriate action to protect their individual interests (e.g. obtaining coverage under their individual unit owner policies for association liability/loss assessments), which is an opportunity they are deprived of when notice of the exclusion is not provided. Another argument is that foreclosure liability is likely one of an association's greatest D&O liability risks and therefore the exclusion of such coverage means D&O coverage is not reasonably available. Also, there is an argument that unit owners may have sought different association policy decisions, such as not pursuing non-judicial foreclosures, if they were aware of the liability exposure, but, never having been afforded notice of the foreclosure exclusion, they were denied the opportunity to address such issues.

Of course, providing the notice is a relatively simple process. Therefore, when weighing the risks versus the benefits an appropriate conservative course of action would be to provide notice to all units' owners that your association's D&O policy excludes coverage for foreclosures.

Thus the question, has your association notified all unit owners that D&O coverage is not available for foreclosures as required by NRS 116.3113(3)?

Adam H. Clarkson, Esq., NVEBP, is the owner of The Clarkson Law Group

Legislative Sessions Make the Laws We Have to Live with:

The Good, The Bad, and Sometimes the Almost Ugly

By Norm Rosensteel, CMCA, AMS, PCAM

The 2017 session was fairly benign and we were able to accomplish the enactment of several very helpful pieces of legislation. Of nearly 30 bills that were introduced, there were nine bills that made it through the process. From election by acclamation, reduced notice requirements for executive sessions of the board, to clarifying required insurance coverages, entry into condominiums for water damage, and the ability to receive excess proceeds from county tax sales the 2017 session was by far one of the most successful ones for those of us in the industry and a win/win in balancing consumer protections without hindering the ability of managers and boards from doing their jobs. **The good!**

Even though it was very successful, it wasn't all positive. We did end up with a bill that prohibits towing of a vehicle for expired registration until that registration has been expired for at least 60 days. We also ended up with additional requirements for including photos with any pre-hearing notice of a violation. **The bad!**

Nothing too serious, UNTIL.....**The almost ugly!**

The last several weeks of all legislative sessions always hold the potential for surprises. Generally, due to time constraints, the Legislature suspends their normal rules of conduct during the last two weeks of a session. It becomes crunch time to try to get all remaining bills processed. During this time, public hearings are not required and many bills wind up in conference committees where a few

legislators can decide on final bill language and changes can be made to bills without public scrutiny.

An amendment to SB 258 (requiring photos be sent with pre-hearing violation notices) was proposed in the final hours and was being called "The Nevada Homeowner Equity Protection Act." The amendment would have required association foreclosure sales to be "commercially reasonable" and to meet certain arbitrary standards that would be difficult, if not impossible, to meet, which would have severely impacted an association's ability to foreclose and sell a home to recover back assessments and fees. **The bad and the almost ugly!**

We found out about the amendment through the efforts of our all-star lobbyist, Garrett Gordon. Garrett has been invaluable in keeping us informed, even of little-known issues such as this one, and also in controlling our reactions. Generally, calm discussion is the way to resolve issues rather than knee-jerk, angry outrage, even though it is sometimes our natural inclination to react instead of act purposely. CAI LAC, through Chuck Niggemeyer, our Vice Chair, was able to mobilize our grassroots members to contact their representatives to put a stop to this last minute effort to undermine associations' ability to ultimately collect assessment debt owed to them. At one point near the final day of the session, one legislator sent us an email saying, "Please make them stop!" - referring to the flood of emails sent in protest. **The good!** The amendment was finally withdrawn and the session ended without further controversy.

Even so, it is likely that some form of this proposed legislation will return in the next session. We are committed to working with our committee, our lobbyist, our members, and our legislators to enact sensible and positive legislation where needed. Looking forward to 2019!

Norm Rosensteel, CMCA, AMS, PCAM,
Co-Chair Nevada LAC, President of CAMCO North Division

*The information you learn today, from reading the articles in **Community Interests** magazine, should not be confined to the walls of your office or home.*

By sharing these articles, you help implant the information in the minds and hearts of another person.

That can change the world!

The Letter of Law vs. Its Spirit:
Looking Between the Lines

By Mike Van Luven, Esq.

There is a quote by Otto von Bismarck that goes something like this: "Laws are like sausages- it's better not to see them being made." The punchline is that the end product is infinitely more palatable. But sometimes we need to know what went into a law just the same as what went into a sausage (for the vegetarians or nutritionists out there) because at the end of the day the law is so much black-and-white when our communities are living, breathing shades of grey.

Some laws are certainly more flexible than others, although it may not appear so from the letter of that law. Nowhere is this truer than in common-interest communities. So much of this industry is regulated by what attorneys call "black-letter law" and the professionals that navigate these laws are under certification requirements for a reason. As an attorney servicing numerous common interest communities and their boards, it is rare that I get a phone call asking me about what the letter of the law is - that is easy enough to read for oneself.

Instead, a typical phone call with a community manager will go something like this: "I know NRS 116.xyz says [this], but does my board have any options with regard to [outcome]?" On the other end of the spectrum, I will sometimes receive a letter from the Ombudsman or the Division pursuant to an investigation: "It is alleged you violated NRS 116.xyz by NAC 116.xyz because you failed to [follow the letter of the law]. What say you?"

For these situations and many others, the attorney is your friend. We are trained in law school to consider the letter of the law, sure, but the real pudding is what went into making that law in the first place- the spirit of that law.

Consider for example, NRS 116.3102 – "Powers of unit-owners' association; limitations." This section contains the keys to running an HOA. In its provisions and sub-sections you will find specifically what your common interest community can do and conversely what it (maybe? probably?) cannot do (or should not do). Chances are most of the management community and those who have

ever served on a board of directors have encountered a homeowner who was quick to cite some part of this statute to fight a violation notice, challenge a board action, or otherwise take issue with the operation of their community.

But NRS 116.3102, for all of its specificity, is not the be-all and end-all. No, the spirit of the law is evident in multiple places in just this one section.

First, NRS 116.3102 demonstrates that while the legislature was careful to enumerate specific instances and spheres of authority for common-interest communities, the overall intention—the spirit of the law—was for reasonable self-governance: "Except as otherwise provided in this chapter, and *subject to the provisions of the declaration* …" In other words, NRS 116.3102's list of powers and proscriptions ultimately will give way to the declaration, on the theory that a community knows what is best for its membership and will reflect these considerations in its own governing documents. This is also reflected a bit farther down in NRS 116.3102(1)(q): "[T]he association: (q) May exercise any other powers conferred by the declaration or bylaws."

Sticking with NRS 116.3102, let us take a look at two other sub-sections: NRS 116.3102(1)(r) and 116.3102(1)(t). The first says simply that an association may exercise any powers normally granted to "legal entities of the same type as the association." In legalese, this means corporations (and there are other analogs to corporate functionality throughout NRS 116). Ultimately an HOA should be expected and empowered to manage its own affairs without too much interference. The other section, NRS 116.3102(1)(t) says that an association is granted "any other powers necessary and proper for the governance and operation of the association." This sub-section, more than any other, evidences the spirit of NRS 116- that the intent of these common-interest communities look after their own.

Of course, this is not to say that laws should be disregarded in favor of some overarching policy of self-determination. A consideration of the "spirit of the law" is not intended to circumvent clear law to the contrary. Instead, think of this kind of analysis as a way of resolving a dispute. After all, the danger of taking just the letter of the law is that words can only appear together in so many ways, and are subject to interpretation (and the aims, biases, and experience of those interpreting). In those situations, where intelligent people disagree on what the words themselves may mean, the spirit of the law is one more tool for running your communities.

Mike Van Luven, Esq., Associate Attorney, Boyack Orme & Anthony

Northern Nevada Tradeshow Gallery

Visit our Facebook page for more photos! Search **CAI Nevada.**

The Northern Nevada Trade Show was recently held at the Peppermill in Reno. The sell out crowd attended the brand new manager seminar "Sexual Harassment: What You Should Know" by Adam Clarkson, Esq. & Cheri Hauer, Esq., thank you to our education sponsor, Eugene Burger Management Company. The attendees enjoyed a deli lunch and visited with 30 business partners, enjoying networking and raffle prizes as well as a live burn in the parking lot by the Washoe Fire Department. Thank you to Michelle Turner for arranging the fire department lecture and demonstration.

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Angius & Terry, LLP
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General Counsel including CC&R Compliance and Construction Defect Resolution
1120 N. Town Center Drive, Suite 260
Las Vegas NV, 89144
702-990-2017 • Fax: 702-990-2018
www.angius-terry.com

Fenton Grant Mayfield Kaneda & Litt LLP
Construction Defect Attorneys
1955 Village Center Circle, Las Vegas, NV 89134
702-947-4900 • Fax: 702-947-4901
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702-538-9074 • Fax: 702-538-9113
Reno:
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Reno, Nevada 89511
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So, You've Been Nominated for a Gala Award!

By The Gala Committee

So, you've been nominated for an award to be given at the 2018 Gala, celebrated at the Smith Center on March 29, 2019. CONGRATULATIONS! Someone, or possibly several someones, thought very highly of you, your achievements, and the impact you made within your industry, community, or within CAI in general. Now, don't just blow it off. Take that next step and fill in the form. It's easy and relatively quick, should not take you more than an hour, if even that, and you are on your way to potentially receiving that award that you so well deserve.

The process is simple. You can access the forms through the CAI email blast for the award nomination process. Here is what to do.

Question No. 1 varies depending on if you are nominated for an award as a manager, board member, an association, or a management company. The basic questions are as follows.

What CAI committees do you serve? Have you attended a minimum of 75 percent of the meetings? Points are awarded per each committee up to a maximum of 12 and include: Gala, CA Day, Education, Events, Golf, LAC, Magazine, Membership, Social Committee/Outreach. Are you a chair or co-chair?

Have you attended managers' breakfasts in the North or monthly luncheons in the South and what dates? (two points per luncheon, maximum of six points)

Have you contributed to the CAI NV chapter magazine? if yes, title of article and dates of publication. (3 points per submission, maximum of 15 points)

The essay(s). A – provide information and details regarding how you have enhanced the lifestyle of your residents and homeowners, overcame issues and problems, created a sense of community. (maximum of 25 points) B – provide information and details on how you were involved in CAI activities and opportunities. (maximum of 15 points)

The process for choosing associations and management companies is based on the essay, which comes in two parts, the same two being A and B as identified in the box above, but the point counts are different. If you received an award at last year's Gala, deduct one point.

Once these forms are submitted, office staff will check your answers and the essays will be further reviewed by the Gala Committee in a special meeting with all names and other identifying characteristics removed.

See how simple this is? So, what are you waiting for? Be sure to submit your application by the deadline and relax.

Nominations open October 1 and close October 31

Essay submissions begin November 1 and close November 30

To Honor and Remember.....

On October 1, the first anniversary of the Route 91 Harvest Music Festival shooting here in Las Vegas, there will be an event at the Healing Garden to honor the victims. Time of the event has yet to be determined, so watch local news outlets. But do come to honor those who lost their lives.

The Healing Garden is located at 1015 South Casino Boulevard.

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